United States Court of Appeals

for the Second Circuit

APPENDIX

76-5043

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

In the Matter of

ALBERT W. DUMMOND, INC.

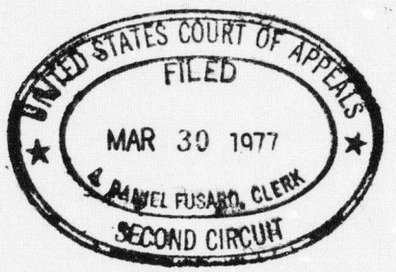
L. ROBERT LEISNER,

Co-counsel for the Trustee-Appellant

Docket No. 76-5043

Bankrupt

B



(Appeal from W.D.N.Y.)

A P P E N D I X

t o

B R I E F

For Appellant:

L. ROBERT LEISNER
2 Kimberly Street #C
Albany, NY 12205

PAGINATION AS IN ORIGINAL COPY

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NAME OF BANKRUPT/DEBTOR: ALBERT V. DUMMOND, INC.

DIST. NO: 2 | DIV. NO: | DOCKET NO: BK-66-1404

CHAPTER OR SECTION: 4

CHECK IF: Voluntary; X Involuntary; Filed and in consolidated; X Corporation

DATE PETITION FILED: 7/6/66

DATE CLOSED:

DISCHARGE: Granted; Denied; Waived or not applied for

OCCUPATION (Check one): Farmer; Employee; Professional; Other (Non-business); Merchant; Manufacturer; X Other (Business)

DATE DISCHARGED:

PETITION DISMISSED? ☐ YES | DATE DISMISSED: | CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED:

ADDRESS OF BANKRUPT/DEBTOR (Number and Street): 2801 Kenmore Avenue

CITY: Village of Kenmore | ZONE: | COUNTY: Erie | STATE: N.Y.

NAME OF JUDGE: John O. Henderson

NAME OF REFEREE: James R. Privitera

NO ASSET CASES ONLY — CLAIMS AS SCHEDULED	TOTAL	PRIORITY	SECURED	UNSECURED
	$	$	$	$

	NAMES AND ADDRESSES
ATTORNEY FOR BANKRUPT OR DEBTOR	Saperston, Wiltse, Duke, Day & Wilson 815 Liberty Bank Bldg., Buffalo, N.Y. 14202
ATTORNEY FOR PETITIONING CREDITORS	~~John Swerdloff, 2500 Rand Bldg., Buffalo, N.Y.~~ deceased (Kavinoky, Cook, Hepp, Sandler & Wisbaum, Attys. for Estate of John Swerdloff), 120 Delaware Ave., Buffalo, N.Y. 14202)
RECEIVER	
ATTORNEY FOR RECEIVER	
TRUSTEE	Louis Sternberg, Esq. Walbridge Bldg., Buffalo, N.Y. 14202 2 Kimberly St., #6, Albany, NY 12205
ATTORNEY FOR TRUSTEE	L. Robert Leisner, Esq., ~~1 Arundel Rd., Buffalo, N.Y. 14218~~ and David J. Goldstein, Esq., Goldstein, Navagh & Bulan, 10 Lafayette Sq., Buffalo, N.Y. 14203 (successors to John Swerdloff, Esq.)

CHANGES OF PRINCIPALS

DATE	Dummond Supply Corp.,
7/6/66	Filed petition of Max C. Haney, Joseph Fiddler & Bonne Fiddler
7/6/66	Issued subpoena ret. 7/16/66 +5 days (7/21/66)
7/13/66	Filed subpoena with marshal's return on service.
7/22/66	Filed order of adjudication & reference to Ref. Privitera. HENDERSON DJ.
8/22/66	Filed bankrupts schedules & statement of affairs.
3/12/68	Filed notice of deposition. (Ref.)
1975	
12-9-75	Filed Motion for reconsideration of counsel fees-returnable 12/22/75.
12-22-75	Motion for reconsideration of counsel fees. Oral argument held. Submitted.
12-29-75	Filed Memorandum in support of L. Robert Leisner's motion - submitted by Wm. R. Brennan.

FORM BK 74-D SEP. 1962 — UNITED STATES DISTRICT COURTS — BANKRUPTCY DOCKET — COPY

X CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT TIME OF FILING

1976

1-19-76 Filed Order remanding motion for reconsideration of ~~XX~~ counsel fees to the Bankruptcy Judge for further review and report, petitioner may supply additional affidavits, documents or testimony before Beryl E.McGuire.-Curtin, DJ

4-29-76 The Court will consider objections to the report of the Bankruptcy Judge on May 17, 1976 at 10:00 A.M. Copies of this notice sent to Mssrs. Brennan, Leisner & Sternberg.

5-18-76 * Filed amended answer of Respondent Manufacturers and Traders Trust Co. to Trustee's petition (dated 3/18/68)
Filed letter by William H. Gardner to L. Robert Leisner (dated 8/15/69)
Filed Letter by L. Robert Leisner to Thelma Elsaesser (dated 3/22/75); with attached memos and copies of Income Tax return forms from Internal Revenue Service.
Filed memorandum by William R. Brennan in support of L. Robert Leisner's motion for reconsideration of fee allowance (dated 12/26/75)
Filed affidavit by Chester A. Pearlman supporting L. Robert Leisner's request for fee allowance (dated 2/9/76)
Filed Letter by William R. Brennan to Beryl E. McGuire, Bankruptcy Judge (dated 2/17/76)
Filed objections to report of the Bankruptcy Judge submitted by Robert L. Leisner (dated 5/17/76)

10-26-76 Filed Decision and Order affirming the Bankruptcy Judge's order and diminishedthe cost by $139.50-Curtin,DJ Copies of order & notice sent to Mssr. Brennan.

11-26-76 Filed Notice of Appeal of L. Robert Leisner, Esq., Co-atty. for Trustee (copy mailed to Messrs. Sternberg, Goldstein and Kavinoky, Saperston, Wiltse, etc., Bkcy. Judge McGuire and to Clerk, CCA with copy of Bkcy. Ct. and Dist. Ct. docket entries; CCA's Forms C and D mailed to Mr. Leisner)

*5/17/76 objection made + filed in Ct. W. Brennan argued R.C

DATE	PROCEEDINGS
Aug. 30	Trustee's bond filed-The Aetna Casualty & Surety Co.
Aug. 31	Order entered appointing John Swerdloff/ $50,000.00 Attorney for Trustee
Sept. 1	Property sold $4974.50 piecemeal
Aug. 25	Appraisals filed
Dec. 1	Order entered appointing L. Robert Leisner and Goldstein & Navagh co-attorneys for trustee(successors to John Swerdloff)
1967	
May 26	Property sold $742.23 to Charles J. Giambrone
Aug. 24	Order entered Compromise E.K. Geyser Co. - $1391.10
Aug. 28	Order entered Compromise Valley Metal Products, MSI Corp. - $5000.00.
1968	
Mar. 21	Order entered to employ Fiddler & Co., Accountants
Mar. 26	Order entered to employ American Industrial Auctioneering Co., Inc. - VOID
Apr. 17	Order entered vacating employment of American Industrial Auctioneering Co., Inc.
Apr. 17	Lewis Bronstein auctioneer - appointed 8/23/66
July 23	Entered order transferring $10,000 to interest bearing account Interest bearing account - Marine Midland Trust Co.
1969	
June 4	Order entered compromising Mauser settlement in the sum of $1544.90.
8/9/72	Order authorizing payment of bond renewal premium
6/29/73	Order authorizing payment of bond renewal premium
8/8/73	Hrg. obj. to claims (8); 8/27/73 - Cl #51 adj. 9/17/73 -allowed as $39,090.15
8/24/73	Order authorizing exchange of releases M. Stark Constr. Corp. and trustee and stipulation of discontinuance of action
~~9/24/73~~	~~Order on hrg of 8/8/73 filed~~
11/7/73	Co-attys application for fees filed - Goldstein et al *
11/9/73	Trustee's final report filed - $115,020.35 bal on hand *

DATE	PROCEEDINGS
	IV
1/24/74	Order authorizing Trustee to withdraw funds from savings acct. to deposit in checking acct. at Marine Midland-Western
6/24/74	Co-atty for trustee's application for fees(L.Robt. Leisner
7/11/74	Application for fees by attys for estate of John Swerdloff
7/30/74	Order authorizing payment ob bond premium
1/13/75	Notice of Motion-Obj. to Cl. 104; 1/20/75 Cl. 120 PF
1/20/75	Claim 120 - Adj. 2/10/75 Claim 104 - Al. Priority $250.00 ; A - H.P. Bulan; Mr.Po
2/10/75	Adj. obj. Cl 120 - trustee to submit order
2/19/75	Order on Cl 104 and 120
4/4/75	Notice final meeting; 4/16/75
4/16/75	Final meeting; Decision on allowances reserved; (see minutes); Mr. Sternberg, Mr. Leisner, H.P. Bulan, Mr. Waldron, Mrs. Lyons, John White for trustee
5/2/75	Co-attorney/L. Robert Leisner, supplemental application for legal services
5/7/75	Order on claims al at final meeting 4/16/75
7/28/75	Order authorizing payment of bond premium
OCT - 3 1975	Allowances sent to DC for approval
10/7/75	Allowances approved JTC USDJ
1/20/76	Order JTC USDJ remanding order atty fees to BEM BJ
1/20/76	Order last day to file additional affidavits or documents - trustee 2/6/76
1/21/76	Order modifying 1/20/76 order - hearing; 2/10/76
2/12/76	Hrg. co-atty for trustee; decision reserved; Wm. Brenna L. Robert Leisner, H. P. Bulan,
4/14/76	Transcript of 2/12/76 trial
4/26/76	Report (BEM)
4/27/76	Report of BEM 4/26/76 sent to DC re atty fees
4/28/76	Order authorizing payment of reporter costs $139.50
7/16/76	Order authorizing payment of bond premium
10/27/76	Allowances confirmed by district court
10/28/76	Application for payment of approved fees

DATE	PROCEEDINGS	
11/3/76	* Order authorizing payment to Trustee; Co-attorneys for Trustee; and attorneys for estate of John Swerdloff; Attorney for petitioning creditors	V

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

ALBERT W. DUMOND INC. BK-66-1499

Bankrupt

Petition for Allowance of Attorney Fees

PETITION AND REPORT OF LEGAL SERVICES

TO: HON. BERYL E. McGUIRE, Referee in Bankruptcy

The petition of L. ROBERT LEISNER respectfully shows the Court as follows:

1. Your petitioner is a licensed attorney and councillor at law admitted to and practicing in this Federal Court for the past 20 years with an office at 1 Arundel Rd., Buffalo, N. Y. 14216. He was appointed Co-counsel for Louis Sternberg, Trustee of the bankrupt herein on or about Nov. 16, 1966 upon the death of John Swerdloff, original attorney for the said trustee herein. Confirming papers and orders of appointment to such effect were entered in this Court on or about Dec. 1, 1966. This estate is now ready to be closed and petitioner submits herewith his report of and request for compensation for legal services and disbursements herein.

2. The legal services herein of your petitioner were rendered pursuant to appointment by this Court as Co-counsel to the Trustee in bankruptcy and were rendered solely and exclusively for the Trustee in bankruptcy herein. For con--venience said services are summarized chronologically in Schedule "A" which is annexed hereto and made a part hereof, and which was prepared from the original papers and the time records kept personally by your petitioner in the normal course of business. An hourly recap for each year is contained in Schedule "B" likewise incorporated herein and likewise dis--bursements in schedule "C", totaling $317.35.

3. At the time the petition in bankruptcy was filed,

(Cont'd)

on or about July 6, 1966 the bankrupt was in the window installation and construction business for many years past and was actively engaged in window installations on new construction work for large public and commercial buildings in New York and several other states. The bankrupt had encountered eincreasingly slow and bad receivables for large jobs over recent years and began to actively experience financial difficulties such as meeting payrolls, paying creditors and covering overdrafts. As the situation became critical with bouncing checks and overdrafts, by the b ankrupt which had accrued a large unsecured indebtedness to the M & T Trust Company. The bankrupt came under bank press--ure to cover drafts and debt renewals and made a large mortgage to the M & T Trust Company on its valuable real property and buildings in the Town of Tonawanda. This mortgage was within four months of the filing of the petition for bankruptcy. The mortgage was for an antecedent indebtedness and was believed to be in excess of $100,000.00.

4. The appointment of the Trustee, Louis Sternberg and his attorney John Swerdloff took place in August 1966 and administration of this estate had been excellently commenced, when John Swerdloff died on Nov. 14, 1966 after a short illness. While the condition and progress of the administration of the bankruptcy during this short time were excellent, the unfortunate death of the Trustee's attorney in a bankruptcy of this size and complexity at a critical time created problems, burdens and work which would not otherwise have been the case.

5. At that time collection of the accounts receivables had commenced. All of the debtors had been contacted and some receivables had been collected. Many of the debtors had asserted offsetting construction completion charges and other setoffs and counterclaims. The office equipment and personalty had been sold. The trustee was in possession of the real property and collecting rents. The lessees held leases with various renewal

and right of first purchase options. Additionally the Manufacturers' and Traders' Trust Company asserted the validity of its mortgage which it now developed was for a principal amount of approximately $125,000.00 against the same property together with claims for rentals by assignment.

6. At that same time payrolls, W-2 forms, and taxes were confused and had not been determined. The bankrupt's prior and present insurance coverage were tangled. There was much uncertainty about the work and jobs in progress which had stopped at various construction sites.

7. Almost immediately upon their appointment the Co-counsel by mutual agreement met at an organizational meeting to devise a work plan and to undertake work best suited to their time, skills and office facilities. At this meeting it was re-cognized that even with the already excellently structured administration of the estate by John Swerdloff, the creation of any significant estate for the bankrupt would rest to a great degree on several highly questionable factors which would require a vast amount of work. These factors were:

a) A principal asset listed in the bankrupt's schedules was the real estate of $60,000.00(presumably cost or book value) against which the M & T had already asserted a secured mortgage principal of approximately $125,000.00 as well as the rental assignments to cover the debt.

b) The second principal asset consisted of debts due on open account in the book amount of $190,305.00. The fact that the bankrupt had been going downhill for several years past indicated that most of these accounts were old and ageing and would be difficult if not already uncollectible by virtue of the poor condition of the debtors a number of whom were already out of business or near collapse. Additionally many of the accounts were for building work only partially completed which would be subject to counterclaims, damage claims for work left exposed and damaged by the work stopping, claims for cost of

completion and many accounts were flatly disputed or had claims for inferior work already done, or for work change orders, etc.

d) Additionally the mere matter of administering and straightening out claims and inquiries from all quarters for pay--rolls, insurance, taxes, compensation taxes and all the other government and private inquiries would constitute a great drain on the estate and would involve a great burden of administration. The obtaining of job records, contracts and lien records were of course essential to our claims and accounts receivable on behalf of the bankrupt.

e) Further due to the chaotic condition of construction work when stopped in progress not only the accounts receivable would have difficulties of excessive counterclaims, but the accounts payable would have inflated claims which would have to be resisted and corrected.

8. The organizational conference resulted in the firm of Goldstein, Mavagh and Bulan undertaking most of the remaining work and litigation on collection, extensive work on building construction liens favorable to the bankrupt, work against credit--ors' claims and much other work as well as working jointly much of the time with your petitioner as Co-counsel against the large preferential transfer to the M & T; all of which works are report--ed to the Court by that firm in its application.

9. Immediately after this conference your petitioner who was located at the same office as John Swerdloff, began to work to separate the bankruptcy files in John Swerdloff's office and to separate and transmit all such files as were appropriate to the office of his Co-counsel in accord with the work plan devised at the aforesaid organizational meeting. Due to the mass of files and material this process at intermittent interval extend--ed over a considerable period of time. Your petitioner also undertook to handle the considerable volume of accumulated and oncoming mail which was already being directed to the same office at the earlier request of John Swerdloff and to make the appropriate

distribution to the respective Co-counsel so that pending litigat-
-ion, negotiations and correspondence on behalf of the bankrupt would take place without interruptions, delays or confusion and the pending work of the deceased attorney carried on by the Co-counsel as planned.

10. Your petitioner undertook to and did the work to ascertain the whereabouts of papers, contracts, tax returns, financial statements, etc. in files stored at the Swerdloff residence garage, or warehoused in the storerooms of the Fiddler and Company accounting in transfer and storage files. Because of the action being brought against the M & T preferential mort-
-gage it was essential to maintain the possession and integrity of these records as the various inquiries and demands took place from tax, labor, and other government officials and arrangements were being made to cover confused payroll and insurance situations. Considerable time in the worksheets included time to refer to the records in connection with tax authorities, offsets, counter-
-claims, wage claimants and refund claims by the bankrupt on prepaid items.

11. Early in the bankruptcy proceedings the trustee requested your petitioner to take care of the tax affairs and returns of the bankrupt. Filing of Federal and New York State Tax returns was necessary and after investigating the affairs of the bankrupt, your petitioner concluded that certain losses of the bankrupt were availible to the bankrupt for tax write-offs.

12. Considerable work and research was required to de-
-termine the amount of losses and to document them from the files of the bankrupt. Thereafter your petitioner prepared and filed tax returns on behalf of the bankrupt and utilized the loss carryovers. Additionally your deponent requested early audits. Upon audit, your petitioner conferred with the tax examiner and supplied documentation by way of prior financial statements and records, further documentation and records of certain loss transactions from the papers of the bankrupt. Subsequently the

bankrupt received a report of no change for the years 1967, 1968 and 1969. The subsequent returns were filed on the same basis as the prior years for which the no change report has been re--ceived.

13. The real property and buildings of the bankrpt which were the principal asset of the bankrupt according to the schedule filed by the bankrupt after the involuntary petition and further according to that schedule the property was fully mortgaged to the M & T and that bank vigorously and steadfastly maintained the validity of the mortgage. Factors essential to the setting aside of this mortgage would be the showing that the M & T was a general creditor of the bankrupt, that the mortgage was to secure an antecedent indebtedness, that the bankrupt was insolvent at the time of the mortgage and transfer to the M & T, that the M & T had reasonable cause to believe that the bankrupt was insolvent at the time of the transfer, and that the actual effect of the transfer was to give the M & T a greater percentage of its debt than other creditors of the same class. Because of the importance of this factor of the bankruptcy your petitioner conferred and consulted with Co-counsel David J. Goldstein at timely as well as at all critical stages of this most important litigation in the bankruptcy. While there was no duplication of work it was essential that both Co-counsel be abreast of the case and aware of the progress, developments and views of the other Co-counsel so as to coordinate and maximize their joint attack against this preferential mortgage.

14. Your petitioner having a considerable background and experience in net worth litigation, (O'Connor v. Comm.; Kendzie v. C.; Casciani v Comm., U.S, etc.), undertook to do and did the work on this mass of records and papers, locating, studying and analyzing the many financial statements of the bankrupt, its subsidiary and affiliates and their intercorporate dealings. The petitioner also searched out the evidence, the correspondence and financial records to prove the facts surrounding the long

prior and antecedent indebtedness of the bankrupt to the M & T on early unsecured notes. Your petitioner also undertook the valuation of the real property by appraisers for the coming lit-igation, the investigation of facts surrounding bank overdrafts to creditors and employees, the preliminary facts for evaluation of accounts receivable by fiscal experts, the accounts payable, the tax situation, the back claims on pending construction work and many other factors relating to an accurate picture of the bankrupt's financial condition at the time of the transfer. Because of the great mass of records and files and the many items contained in a corporate balance sheet the legal investigation and research were extremely demanding and time consuming work.

15. Your petitioner then undertook the retention of Ronald Fiddler, C. P. A. of the Fiddler & Co. accounting firm to also indepenaently ~~independently~~ ascertain the status of the banrupt at the time of the preferential transfer to the M &T. The certified accountant utilized all of the above material and al-so tax returns and other materials to form an independent opinion and to be a competent qualified witness in preparation for the coming Court trial. The retention of the certified public accountant by the trustee, his services to the bankrupt estate, and the payment of his $2,000.00 fee which has been paid were authorized and confirmed by the orders of this Court. Dur-ing the work of the accountant, in order for his work to be accomplished, it was necessary for your petitioner to confer with the accountant on numerous occassions. Also to supply him with many papers and documents as well as reports on collections and payables so that he could competently and properly do his work.

16. Along with its contention of a valid mortgage preference, the M & T asserted its right to rentals, the validity of rental assignments and demanded payment on property taxes for its asserted mortgage. Arrangements to pay taxes were made and certain indemnification commitments were made by the M & T to the trustee for his administration of tax payments and rentals should the M & T assertions respecting the mortgage and rentals prevail.

7

17. Not only in respect of the forgoing arrangements, but also during the pendency of the M & T claims, and outstanding amounts of claims and litigation by others, it was deemed of paramount importance for the bankrupt to maintain the continued possession and receipt of rentals until the major litigaton and claims aforesaid could be resolved or disposed of by the bankrupt. In addition to the possession and rentals, the goals on this phase of the case were to preserve the bankrupt from liabilities and large expenses, and also to clear the property of purchase and lease renewals so as to realize the greatest amount possible not only through the rentals, but ultimately through a better sale price. All of this was to continue while the bankrupt at the same time moved to set aside and resist the M & T claims to rentals and its asserted mortgage which was strongly believed to be a preferential transfer.

18. Your petitioner undertook and did accomplish the work of administering and maintaining possession of the real property, and obtaining the rentals and keeping them in this estate. Considerable work was expended on this facet of the bankruptcy. Difficulties in rental collection ensued early in the bankruptcy and continued throughout the bankruptcy. Much work was devoted to these difficulties in order to prevent waivers of lease terms favorable to the bankrupt and to enable the banrupt to later attack the lease renewal and right of pur--chase options. The tangled expenses, property taxes, assessments, utilities, insurance bills, etc. consumed a great deal of time and work. The above work was well warranted in the light of the fact that the bankrupt collected in excess of $62,000.00 rentals. Those facts are reflected in schedule"D"of this report or in more detail in the Trustee's report to the Court.

19. In the early part of 1963 it was determined to break the leases and work by both co-counsel was undertaken for that purpose in this Court with both tenants being brought into court. After several appearances and conferences action in this respect was deferred by stipulation of all parties.

20. Ultimately because of the difficulties with Coder Service Inc. on rentals and the desirability of breaking lease renewals and purchase options for more favorable sale of the bankrupts property, full scale eviction proceedings were undertaken by your deponent against Coder Service Inc in the State Courts, and after trial an agreement was obtained which rid the property of lease renewal options and purchase options and prepared the way for the sale of the property.

21. Thereafter working with Co-counsel, on Court order an auctioneer was appointed and an auction held with sale subject to confirmation at which a lump bid of $80,000.00 and a piece meal bid of $85,000.00 were obtained. Because of the uncertain--ties involved in the M & T preferential mortgage transfer which controversy was still pending the sale was not confirmed. These actions on the part of counsel resulted in fixing values, bringing the preferential mortgage transfer litigation into focus and expediting the litigation and accompanying negotiations, etc.

22. By this time your deponent had done much work on financial statements, on case law, on marshalling evidence and various legal papers, interviewed witnesses, and retained the services of an accountant and an appraiser for the pending lit--igation. Additionally petitioner had held many conferences with Co-counsel and had held examinations before trial with Co-counsel acting jointly in those examinations. Early in 1968 active litigation on the M & T mortgage preference had ensued. With not only a number of Court appearances reflected in the work schedules herein and also the report of Co-counsel, the litigation also encompassed numerous show cause orders, affidavits and petitions with claims and counterclaims, amendments, notices to produce for examinations before trial by the M &T and also innumerable adjournments, conferences and negotiations between the parties which are reported in the work schedules herein.

23. Ultimately with a full trial of a least several weeks of complicated and difficult financial litigation looming,

The success of the undertaking rested to an extreme degree on the skills, experience, strategy, judgement and timing of the Attorneys and their considerable expenditure of a great amount of legal time and work herein. In view of the above considerations and the highly successful results acheived, your petitioner respectfully urges that the fair and reasonable value of the services rendered by your petitioner is $18,500.00. This compares with gross assets received in the estate of more than $152,000.00.

WHEREFORE, your petitioner respectfully prays that a hearing on this application be held on notice to the creditors and such others as are entitled thereto, at the conclusion of which your petitioner be allowed the sum of $18,500.00 as counsel fees for services rendered herein, and that he may be reimbursed for disbursements of $317.35, and that your petitioner may have such other and further relief as may be just and proper in the premises.

Affirmed pursuant to the Federal Rules of Procedure as an Attorney on April 26, 1974.

L. Robert Leisner

L. ROBERT LEISNER, Attorney

Office & P.O. Address
1 Arundel Rd.
Buffalo, N. Y. 14216
838-2393
Albany -AC 518-457-2657

Sworn to before me this
27th day of April, 1974

Theodore M. Brandt

NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES MARCH 30, 1975

84

Affidavit - 62 d Bankruptcy Act

State of New York)
County of Erie) SS

L. ROBERT LEISNER, being duly sworn deposes and says that he is the Co-Attorney for the Trustee in Bankruptcy in The Matter of Albert W. Dummond Inc. BK-66-1499.

Your deponent has made no agreement or understanding with any person having to do with the division of his compensation or fees, nor has your petitioner made any such agreement in any form or guise, nor has your petitioner agreed to share his com--pensation or fees nor does he intend to do so.

L. Robert Leisner

L. Robert Leisner

Subscribed and sworn to
before me this 27 day
of April, 1974.

Theodore M. Brush

THEODORE M. BRUSH
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1975

1966 ~~35~~

Nov. 16 After death of John Swerdloff, Att'y for Albert W. Dummond, Inc., Bkpt., read and attend to back mail; review main Albert W. Dummond file; review John Swerdloff's office work sheets to ascertain current situation of the bankruptcy proceeding 2½ hr.

Nov. 21 Confer with Henry Weil, Executor, John Swerdloff Estate.
Meeting, U. S. Bankruptcy Ct.; Hon. James A. Privitera; Henry Weil, Executor; L. Robert Leisner, Att'y; Louis Sternberg, Trustee; David J. Goldstein, Att'y; re: death of John Swerdloff, claim of his estate; continuity of bankruptcy proceedings; appointment of successor co-counsel by referee 2 hr

Nov. 22 TC Att'y A. Dutton, re: liability ins.
TC R. M. Schuman, officer Cupples Products Corp. St. Louis, Mo.,re: Acct. Rec. and offsets
Office conference, Max Lenard, assoc. J. Swerdloff, re: files and most urgent matters
TC Alfred Langstaff, Lockport, N. Y. re: wage claims 2 hr

Nov. 25 Review and abstract from Albert W. Dummond, Bankrupt papers at U. S. Bankruptcy Ct. 1½ hr

Nov. 28 Study pending Albert W. Dummond files in office
Conf. Max Lenard, re status of various files
TC Ronald Fiddler, C.P.A re: records and financial statements of bankrupt 3 hr

Nov. 29 Conf. Max Lenard, re: files, organize accounts receivable, wages, taxes, and asserted preferences, review acts of preferential transfers; review leases and conditions; separate collections.
TC Ronald Fiddler, C.P.A. re: payroll, W-2 forms.
Conf. Attys, D. J. Goldstein and W. E. Murnighan at David Goldstein's office.
TC Jim Redich, re: accts. rec. Oldfield Construction
Study schedules of bankrupt
Letter to L. Sternberg, Trustee: report on Conf. with D. J. Goldstein, Co-counsel, transmit Coder rental checks for Oct. and Nov. and check from Oldfield Construction, cc to D. J. Goldstein, Esq. 6½ hr

1966

Nov. 30 Read and attend to mail A. W. Dummond, Inc. Bkpt.
TC Town of Tonawanda Water Dept. re: water bills for rental properties.
Review petition, order and related papers con--firming appointment of counsel for bkpt's. trustee
Execute oath of attorney as Co-counsel for trustee 1 hr.

Dec. 1 Read and attend to mail Albert W. Dummond, Inc. Bkpt
American Mutual Ins. Co. Cancellation notices by Company, refunds of unearned premiums etc. ½ hr

Dec. 5 Read and attend to mail Albert W. Dummond Inc. Bkpt.
re: offsets of creditor's claims Cupples' Products Corp. ½ hr

Dec. 6 Read and attend to mail, Albert W. Dummond Inc. Bkpt
Re: B. S. C. Corp. offsets
T C Ronald Fiddler, C.P.A. payroll data
study papers and legal documents surrounding preferent--ial transfer by mortgage 1 hr

Dec. 7 TC purch dept. Bethlehem Steel Corp. re: acct rec.
TC John W. Cowper Co., John Greer, re: lecture hall construction job, dormitory authority, pull job records of same 1 hr

Dec. 8 TC Ronald Fiddler, C. P. A. to obtain
stored records, New York State and Federal W-2s for employees pay-rolls ½ hr

Dec. 9 Read and attend to Albert W. Dummond mail
Rec'd order of appointment ½ hr

Dec. 11 Read and attend to Albert W. Dummond mail,
wage data for S. J. Groves and payrolls ½ hr

Dec. 19 Review files and study correspondence for:
liability insurance, Albert W. Dummond and American Mutual Liability Insurance;
Rents & leases; prior correspondence of John Swerdloff
Conf. W. Murnighan, Atty to coordinate collection files
TC Coder Service Inc. re rents 2 hr.

		3W
1966		
Dec. 21	TC Mr. Taylor, re: Coder Service Inc. rents Correspondence, re: Michaels Art Bronze	½ hr
Dec. 22	Correspondence, re: Western Union	¼ hr
Dec. 23	Letter to Michaels Art Bronze to settle claims and counterclaims TC New York State Tax Dept	¾ hr
Dec. 26	Albert W. Dummond mail re: insurance coverages	½ hr
Dec. 27	TC Mr. Langstaff, Lockport, N. Y. pref. claim.	½ hr
Dec. 28	TC Taft Stetinius & Hollister, Attys, Cin. Ohio re: Michaels Art Bronze	½hr
Dec. 29	Albert W. Dummond Mail routine correspondence Air mail Spec. Del. Taft Stetinius Hollister, re: Michaels Art Bronze	½ hr
Dec. 30	Dummond Supply Corp. claim	¼ hr
Dec. 31	Check whereabouts of files, dates and counties, re: filing of liens: Truckenbrod & Co. Paul Tishman Samson Window Contract LaCesse Corp. E. K. Geyser Decker Construction Co. William Crow Co A & E Architecturan Materials Inc.	1½ hr

1967

Jan.3	Conf. Mr. Ryan, New York State Tax Dept. TC Wm. Murningan, Atty, re: DuMond Metal Window Inc. Art Metal Window Inc. Truckenbrod & Co. Inc Ronald Fiddler, C.P.A, accounting work for employees Lien cases, breakdown TC Harold Bulan, Atty TC Taft Stetinius Hollister, Cin. O. re: Truckenbrod Letter to Coder Service Inc. re back rentals cc David Goldstein, Esq.	2 hr
Jan. 4	Trip to stored files in North Buffalo at John Swerdloff residence, trip to other stored files at Fiddler accounting office, Sheridan Drive	3 hr
Jan. 5	TC Harold Bulan, Attorney, re: Data from stored files	¼ hr
Jan. 11	Correspondence- letters to Western Union William Higgins H. H. Robertson Robert P. J. McCarthy & Sons Inc. F. L. Hughes & Co. Inc. Ithaca Cortland Builers Exchange Haun Welding Supply Inc. Received Real Property tax bills Conf. Harold Bulan, Atty	3 hr
Jan. 12	Rec'd New York State Dept. of Labor Notices Conf. Harold Bulan and Wm. Murninghan, Attys re: liens and amounts Decker Construction Co. - Alfred University E. K. Geyser - Alfred University Samson Window - State Teachers Write Taft, Stetinius & Hollister re: Truckenbrod TC Coder Services Inc. re: rents for Bldg.	1¾ hr

1967

Jan. 16 Read and attend to Albert W. Dummond Correspondence
Conf. Mr. Irwin, State Labor Dept.
re: old payrolls, rubber checks of Albert W. Dummond Inc. Bkpt. ½ hr

Jan. 17 Read and attend to Albert W. Dummond Inc. Corresp. ¼ hr

Jan. 18 Read and attend to Albert W. Dummond Inc. Corresp.
TC re: Architectural Prod. Div. Pittsburgh, Pa.
TC re: H. H. Robertson, re: backcharges, job on Long Island
Mail check to Louis Sternberg, Trustee
cc to David Goldstein, Esq. 1 hr

Jan. 19 Read and attend to Albert W. Dummond Corresp. ½ hr

Jan. 23 Letters, re: accts. from Decker Construction Corp.
TC Coder Service Inc., re: rental check ½ hr

Jan. 24 TC from Albany, Mr. Irwin State Labor Dept.
Job records Architectural Prod. Div.

Jan.25 TC Wm. Muringhan, Atty
conf. re: records of bkpt. ¼ hr

Jan. 26 TC Ronald Fiddler, C.P.A re: payroll records
Letter to Ronald Fiddler about W -2's
Letter to N. Y. State Labor Dept. concerning records
Misc. Corresp. 1 hr.

Jan. 30 Letter of authorization to New York State Labor Dept to inspect records at other locations ¼ hr

Feb. 1 Find records Kenneth Green
Send letter to Kenneth Green
Conf. re: Arc Electric
find prior records Water Bill Town of Tonawanda
TC Water Dept. Town of Tonawanda, re reducing bill 1 hr

Feb. 2 Find records of acct. Alfred Langstaff
TC Alfred Langstaff, re: W-2 form and proof of claim ½ hr

the litigation was resolved by a stipulation signed by the parties in September 1968 and an order entered in October 1968, both in this Court by which the bankrupt was paid $25,000.00 less 2 years school taxes and was allowed to keep all rents previously collected. The rents and cash payment totaled $86,833.35.

Additionally the M & T waived all right to claim or further participate in the bankruptcy thus waiving $40,000.00 to $50,000.00 of other principal claims on its claimed mortgage in excess of $124,000.00. With adjustments for property taxes, interest income on rents deposited and insurance bills, the $86,000.00 odd dollar figure would probably net to more than $70,000.00 cash plus a 40 or 50 thousand dollar claim waiver.

Considering the earlier auction bid, the auction and sale expenses on an actual sale, the amount realized and the claim waiver, reflect a 100% recovery on the real property for the bankrupt. The great amount of legal work done to accomplish this result was warranted and highly successful.

24. While your petitioner had completed the closing of some collections in the process of settlement or payment when he commenced work, in the main this work had been done in due course by Co-counsel, and only the existence of a few necessary lawsuits prevented the closing of this bankruptcy. During this time the trustee carried almost all funds in interest accounts and your petitioner continued to take care of tax returns and sundry administrative details, when recently the last litigation was disposed of by Co-counsel, so that this bankruptcy may be closed.

25. Your petitioner has received no payment on account of services or disbursements during the period of over 6 years. Your petitioner worked on behalf of the Trustee herein a total of 308.35 hours. The length of years of the bankruptcy and the great mass of complicated materials and facets to be covered necessarily required a great amount of legal time and work. Initially the creation of any significant estate was highly questionable and rested on a number of very difficult variables.

1967		
Feb. 6	Read and attend to Albert W. Dummond Inc. mail TC Mr. Kohlmeir, A & E Architectural Material	½ hr
Feb. 7	Letter re: Insurance bills TC Louis Sternberg, Trustee, re: ins. TC Hodgson Russ - A. Dutton, Atty re: offsets, Am Mutual Liab. Ins. refunds	½ hr
Feb. 8	TC Mr. Bachetti, re: Arc Electric Review accts. rec. and correspondence locate whereabouts of records with Ronald Fiddler, C.P.A, John Anderson, Robert Dumond TC to New York State Sales Tax Section	2 hr
Feb. 9	Work on correspondence, Albert W. Dummond Inc. and its papers surrounding transfer preceding bankruptcy; work on subsidiary company of Albert W. Dummond, Inc and related companies to ascertain condition at time of transfer	1 hr
Feb. 11	Attend to mail Albert W. Dummond Inc. Send Coder Service Inc. check to Louis Sternberg, trustee; cc to David Golistein, Esq.	¼ hr
Feb. 13	find records, send letter to Donald W. Corliss TC Mr. Hartman, H.H. Robertson, back charges	¾ hr
Feb. 16	review accts. rec. rec. letter re: 3rd party action, Mr. Corliss	½ hr
Feb. 20	TC Mr. Heiss, Tonawanda Water Dept. re: reduced bill	¼hr
Feb. 21	Search records, TC H. H. Robertson, re: back charges	½ hr
Feb. 23	Study accts. rec. and financial statements of Albert W. Dummond Inc. at time of transfer prior to bankruptcy	1 hr
Feb. 24	Rec'd letter from David, Thomas re: W-2 form Send to Ronald Fiddler, C.P.A for Thomas	¼ hr

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Feb. 27	letter from Mr. Torres, re: W-2 form TC Mr. Torres	¼hr
Feb. 28	Correspondence re: Carl W. Sprague, Kenneth A. Green	½ hr
Mar. 1	Read and attend to correspondence, Albert W. Dummond, Inc.	¼ hr
Mar. 2	Search for and review ins. accts.	¼ hr
Mar. 3	Attend to correspondence, Albert W. Dummond TC Demand rent Coder Service Inc. Letter to Robert Dumond Study accts. rec. and financial statements of subsidiary co. 3 TC Wm. Murinhan, Atty, re: accts. rec. TC Mr. Greer, John W. Cowper, re payrolls & W F Taxes; TC - Wm. Murninghan, Atty, re: Am. Mut. Liab. Ins.	4 hr
Mar. 7	Letter to Swan & Frawley, Attys for Decker Constr. Co. Study financial statements and related correspondence about preferential transfer TC A. Dutton, Atty, re: ins. Conf. Wm. Murninghan re: files Mr. Irwin Labor report, Water Bills, Decker Const. A & E. Architectural Materials, Cupples Products, Dummond Metal Window	3 hr
Mar. 8	letter Mr. Higgins - Decker Const. Co. TC Louis Sternberg, Trustee, re: ins. TC Hodgson Russ- A. Dutton, Atty re: ins. TC Wm. Murninghan, Atty, re: Decker Const. draw order re: Albert W. Dummond Inc. unearned ins. prem. return to M. & T. Trust Co	2½ hr
Mar. 9	TC Anthony Dutton, Am Mut. Liab. Ins.	¼ hr

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Mar. 15	Rec'd Coder Service Inc. rent for Jan. Mail check to Louis Sternberg, Trustee cc David Goldstein, Esq. obtain order for refund to M & T Trust Co mail copies of order to: Louis Sternberg, Trustee David Goldstein, Esq. Hodgson Russ, A. Dutton, Atty	1½ hr
Mar. 15	Work on Albert W. Dummond Motion re: transfer TC Coder Service Inc. re Rent TC Arc Electric	1 hr.
Mar. 17	Inquiry from and letter to Wm. Shimmer, I.R.S. Special Agent, re: records Geosodonia	½ hr
Mar. 20	TC Town of Tonawanda Water Dept TC Mr. Taylor Comptroller, re: Coder Service Inc back rent	½ hr
Mar. 21	Read and attend to Albert W. Dummond Inc. mail Letter enclosing refund check to Hodgson, Russ, A. Dutton, Atty cc Louis Sternberg, Trustee cc David Goldstein, Esq.	½ hr
Mar. 23	TC Ronald Fiddler, C.P.A. re: aspects of financial position of Albert W. Dummond, Inc. at time of preferential M & T Trust Co mortgage	½ hr.
Mar. 24	Mail rent demand to Coder Service Inc for Feb. & March rent cc to David Goldstein, Esq	¼ hr.
Mar. 27	Attend to Albert W. Dummond mail Rec'd Feb. rent- Coder Service Inc. send check to Louis Sternberg, trustee cc David Goldstein, Esq.	¼ hr
Apr. 4	Attend to Albert W. Dummond mail letter demand for March & April rent to Coder Service, Inc.	¼ hr

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Apr. 11	TC Wm. Murninghan, Atty, re tax & fiscal year	¼ hr
Apr. 14	Conf. I. R. S. Special Agent Schwimmer Search of Albert W. Dummond Inc. records for Geosodonia contractor payments paid by bkpt.	2½ hr
Apr. 17	Letter to Ronald Fiddler, C. P. A. authorizing Special Agent to examine file in storage at Fiddler accounting offices TC to Special Agent	½ hr
Apr. 21	Letter to Coder Services Inc. re rentals	¼ hr.
Apr. 26	Attend to Albert W. Dummond Inc. correspondence Rec'd Mar. rental Coder Service Inc Send check to Louis Sternberg, Trustee	¼ hr
May 9	Mail demand to Coder Service Inc for rent cc David Goldstein Esq. Rec'd letter from Am. Mut. Liab Ins. w/check Mail check to Louis Sternberg, Trustee cc David Goldstein, Esq. TC A Dutton, Atty re letter from Hodgson Russ	¾ hr
May 11	Attend to correspondence, Received follow up information from Hodgson Russ re: other ins.	¼ hr
May 17	Conf. Mr. Ryan, New York State Tax Dept.	¼ hr
May 24	Attend to Corresp. Albert W. Dummond Inc Letter to Coder Service Inc. TC Wm Murnighan, Atty re: accts rec. Letter to Ronald Fiddler re: Dumond Equip. Co. TC Coder Service Inc. re Rent	¾ hr
May 25	TC Coder Service Inc. re Rent	¼ hr

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June 1	TC Coder Service Inc. re rent	¼ hr
June 5	Letter to Coder Service Inc. demanding rents	¼ hr
June 9	TC A Dutton, Atty re ins. refund Letter to Am Mutual Liab. demand ins. refund or suit against local office TC Coder Service re: back rent	½ hr
June 12	TC Louis Sternberg, Trustee, re: back rent letter to Coder Service Inc. final notice before eviction	½ hr
June 14	Attend to Albert W. Dummond Correspondence Rec'd Coder rets for Apr. & May Transmit checks to Louis Sternberg, Trustee cc: David Goldstein, Esq. Letter to Coder Service Inc. demand for June rentals	½ hr
June 19	Attend to Albert W. Dummond Correspondence, Review back files to update action	½ hr
June 23	Rec'd June Rental from Coder Service Inc. Mail check to Louis Sternberg, Trustee cc David Goldstein, Esq.	¼ hr
June 28	Rec'd letter and check from Am. Mut. Liab. Ins. Co TC Mr. Bachetti, re: Arc Electric	¼ hr
June 29	TC Hodgson Russ, A. Dutton, Atty re disposition premium	¼ hr
June 30	Letter to Louis Sternberg, Trustee re: premiums, cc: David Goldstein Esq.	¼ hr

1967		
July 5	Draft application & order authorizing payment of refund to M & T Trust Co Conference Louis Sternberg, Trustee, re bankruptcy generally, and action on preference; attend to execution of refund application; File application & order in bankruptcy court; obtain copy of signed order TC Hodgson Russ, A. Dutton, Atty	1½ hr
July 6	Deliver copy of order etc to Louis Sternberg Trustee	¼ hr
July 11	TC to Coder for July rent Letter to Coder Service Inc. Letter to State of Connecticut about tax claims	½ hr
July 19	Attend to correspondence Albert W. Dummond Inc. Letter to A. Dutton, Atty w/ ins. refund check cc Louis Sternberg, Trustee cc David Goldstein, Esq. TC Coder Service, Inc. for July rental	½ hr
July 27	Attend to Correspondence, rec'd Coder check	¼ hr
July 28	Mail Coder Service Inc. July rent to Louis Sternberg, Trustee; cc David Goldstein Esq.	¼ hr
Aug. 2	TC Coder Service Inc.	¼ hr
Aug. 3	TC Ronald Fiddler, C.P.A re details of Dumond Equipment Corp.	¼ hr
Aug.4	Review accounts receivables progress, determine collectibility re action to set aside mortgage. TC LaCesse Corp; TC Louis Sternberg, Trustee Rec'd check from LaCesse Corp. Mail check to Louis Sternberg, Trustee, cc: David Goldstein, Esq	¾ hr

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Aug. 7	TC Harold Bulan, Atty re progress of accts rec. and balances on various accts. TC Louis Sternberg, Trustee, re: LaDesse Corp. Account	½ hr
Aug. 15	Various correspondence, Letter to I. Seidenberg	¼ hr
Aug. 17	Attend to Albert W. Dummond Inc. correspondence Fiddler & Co. Statement	¼ hr
Aug. 18	Letter to Coder Service Inc. demand rent TC Ronald Fiddler, C.P.A. re: Accts. Rec.	½ hr
Aug. 28	TC Ronald Fiddler, C.P.A re: details of net worth at time of transfer by mtge to M & T	¼ hr
Sept. 3	Rec'd Letter from N. Levin, Rev. Off. TC N. Levin re: 1966 tax	¼ hr
Sept. 6	Attend to Albert W. Dummond Inc. Corresp. Mail Aug. rent Coder Service Inc. to Louis Sternberg, Trustee; cc David Goldstein Esq.	¼ hr
Sept. 21	Letter to Coder Service Inc. demand rent	¼ hr
Sept. 27	Legal research on cases of insolvency and preferential transfers	2 hr.
Sept. 28	Legal Research on insolvency	2 hr
Oct. 3	TC Coder Service re rentals Letter to Coder Service re rentals TC Coder Service re rentals Notations on check Rec'd check Coder Service Inc. for part rent Mail Coder check to Louis Sternberg, Trustee cc David Goldstein, Esq.	¼ hr
Oct. 5	Study pending files	¼ hr
Oct. 9	Study records at Erie County Hall, Study Mortgage papers, letters etc of Albert W. Dummond Inc. with M & T TC Ronald Fiddler, C.P.A. re preliminaries to M & T mortgage	3 hr

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Oct. 10	study papers of mortgage and balance sheets of corporations	1¾ hr
Oct. 11	Attend to Albert W. Dummond Inc. correspondence Letter to Mr. Palmeri, N. Y. State Labor Dept. TC Arc Electric, Mr. Bachetti	½ hr
Oct. 12	Legal research cases on preferences	2¾ hr
Oct. 12	Conf. David Goldstein, Esq. re action to set aside mtge to M & T Trust Co TC David Goldstein re additional factors Study corporate records Draft proposed application and order to show cause why mortgage to Manufacturer's and Trader's Trust Co should not be declared void	3 hr
Oct. 13	Conference re: Action to set aside mtge; Louis Sternberg, Trustee David Goldstein, Esq. Harold Bulan, Esq. TC Louis Sternberg TC John Hancock Ins. re policy	3½ hr
Oct. 16	Study additional factors on insolvency TC Louis Sternberg re: amts. collected on accts. rec.	½ hr
Oct. 17	Letter to Coder Service Inc. demand Oct. rent	¼ hr
Oct. 18	Study evidentiary procedures demonstrating insolvency	½ hr
Oct. 19	Conference, Harold Bulan, Atty Study additional records of accts. rec	1 hr
Oct. 25	TC Ronald Fiddler, C.P.A. re: specific problems about bankrupt's net worth.	¼ hr
Oct. 26	Conf. David Goldstein,Esq. Ronald Fiddler, C.P.A. Harold Bulan, Esq. re: accounting factors of insolvency, net worth procedures on case to set aside preference	1½ hr

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Oct. 30	Conference referee in bankruptcy at Bankruptcy Ct., Conference David Goldstein, Esq. Re: retention of Ronald Fiddler, C.P.A. TC Ronald Fiddler, C.P.A. about accounting audit	1½ hr
Nov. 1	Mail demand for October and November rentals to Coder Service Inc. draft petition and order to authorize audit and employment of auditor by trustee	1¾ hr
Nov. 3	Attend to correspondence Albert W. Dummond Inc. Review files TC Fiddler & Co. Acctg firm	¾ hr
Nov. 6	TC Internal Revenue Service, Albert W. Dummond Inc. taxes, bkpts' affairs	½ hr
Nov. 8	Rec'd Coder Service rent for Oct. Mail rent to Louis Sternberg, Trustee cc: David Goldstein, Esq. letter to Coder Service Inc. demand Nov. rent	½ hr
Nov. 13	TC Robert Kelsey, re: John Hancock Ins.	¼ hr
Nov. 22	TC Mr. Levin, I. R. S.	¼ hr
Nov. 24	TC Mr. Levin, re affairs of bkpt.	¼ hr
Nov. 27	Letter to Coder Service Inc. demand November rent	¼ hr
Dec. 15	Read and attend to Albert W. Dummond Correspondence	¼ hr
Dec. 18	Letter to Coder Service Inc. demand November and December rents	¼ hr
Dec. 26	Conference David Goldstein, Esq. Harold Bulan, Esq. Review and coordinate work Review files	1½ hr

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Jan. 2 Rec'd checkCoder Service, Inc. Nov. rent
Mail rental check to Louis Sternberg, trustee
cc: David Goldstein, Esq.
Letter to Coder Service Inc. demand for Dec.
and Jan. rents ½ hr

Jan. 5 Conference David Goldstein Esq. and
Harold Bulan, Esq., re: Examination before trial
map inquiries concerning Albert W. Dummond, Inc.
payments on loans, and accounts payable not being
met; dealings with M & T; overdrafts on payroll and
other checks; attempts to extend payments, etc
Office work review financial statements for
Examination before trial 2 hr

Jan. 8 Correspondence, Albert W. Dummond Inc. ¼ hr

Jan. 10 Examination before trial, Robert Dumond,
with David Goldstein, Esq. and
Harold Bulan, Esq., at U. S. Bankruptcy Court
Extensive examination concerning dealings
with M & T prior to mortgage, overdrafts,
receivables, etc, assignment or rents, etc. 2 hr

Jan. 14 TC Ronald Fiddler, C.P.A., re order
authorizing payment ¼ hr

Jan. 15 Rec'd Dec. and jan rents from Coder Services, Inc.
Mail rents to Louis Sternberg, Trustee
cc David Goldstein, Esq. ¼ hr

Jan. 28 Attend to correspondence, Albert W. Dummond Inc. ¼ hr

Feb. 17 Rec'd letters from Harold Bulan, Esq. and
copy of Louis Sternberg, trustee, letter re:
tax returns ¼ hr

Feb. 20 Conference, David Goldstein, Esq. re
proceedings to set aside preferential transfer ½ hr

Feb. 20 Research and reworking final drafts on order to
show cause why M. & T. mortgage should not be
invalidated.
Letter to Coder Service, Inc. demand Feb rent 2¼ hr

Feb. 21	Do Final papers on petition and order to show cause why Albert W. Dummond Mortgage to M & T Trust Company should not be set aside. Attend to execution of application by trustee File application and proposed order with U. S. Bankruptcy Ct. Obtain copy of order signed by Court. Service of show cause order on M & T Trust Co	6 hr
Feb. 24	Attend to Albert W. Dummond Inc. correspondence Adjournment of Feb. 28 proceeding to Mar. 13, 1968	¼ hr
Mar. 6	Rec'd Coder rent, Attend to correspondence	¼ hr
Mar. 13	Rec'd Answer of M & T Trust Conference, David Goldstein, Esq. Harold Bulan, Esq Re: subpoena of witnesses; Rentals; value of real property-appraisal & valuation	1½ hr
Mar. 18	Rec'd amended answer of M & T; rec'd opposing show cause order on behalf of M & T to take rents and possession of the property. Study papers and allegations	1 hr
Mar. 19	work on petition for employment of Fiddler & Co for audit of Albert W. Dummond Inc at time of insolvency and mortgage.	½ hr
Mar. 20	TC David Goldstein, Esq. draft applic. & order for employment of Fiddler & Co.; review facets of work requested of Fiddler & Co.; gather various papers needed for auditors	2½ hr
Mar. 20	Analysis of prior tax returns and prior operating losses for tax returns	1½ hr
Mar. 20	TC Fiddler & Co letter to Coder Service, Inc. demand for Mar. rent	½ hr
Mar. 21	Complete final of application & proposed order	

(cont'd)

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Mar. 21	work re: employment of Fiddler & Co; attend to execution of application by trustee, file application and proposed order in bankruptcy court; obtain copy of signed order from Ct.	1¾ hr
Mar. 22	prepare briefs & working notes of papers on insolvency	1¾ hr
Mar. 25	Return date of opposing M & T show cause order (adj. generally with tentative date Apr. 29	½ hr
Mar. 29	TC David Goldstein, Esq. re: lease negotiations w/ Harold Lowe, Att'y for Coder Service Inc. Mark Turner, Att'y for West End Brewing Co. Appearance in Banruptcy Ct. with David Goldstein, Esq. on show cause order to strike lease provisions, Appearance of Harold Lowe and Mark Turner, Atty's for respective defendants	2 hr
Apr. 1	Conference: David Goldstein, Esq. Lewis Bronstein, Auctioneer	1 hr
Apr. 2	Mail February rent to Louis Sternberg, Trustee TC Coder Service, Inc., demand March and April rents. Research cases of bankrupt's property val. Preparation and research for 1967 fiduciary Tax returns	3 hr
April 3	TC David Goldstein, Esq. Louis Sternberg, Trustee re: show cause orders & cross motions	1 hr
Apr. 4	TC Wm. Gardner, Esq. Re: Motions	
Apr. 5	Attend to Albert W. Dummond Correspondence	¼ hr
Apr. 11	TC re Coder Service Inc. & M & T Actions	¼ hr
Apr. 12	TC re Coder Service Inc.	¼ hr
Apr. 17	TC membership sect'y Ellicott Club, re: Dummond membership share	¼ hr

Apr. 18	Conference, David Goldstein, Esq. re: leases, auction alternatives with various provisions of leases, breaking of Coder lease	¾ hr
Apr. 19	TC R. DiNatale of Fiddler & Co Acct'g firm	¼ hr
Apr. 19	Complete Tax returns, meet with Louis Sternberg, Trustee for execution, file at Rev. office obtain receipted copy TC DiNatale, acc't, re: audit statements TC David Goldstein, Esq.	2 hr
Apr. 21	Send copies of tax returns to Louis Sternberg trustee	¼ hr
Apr. 25	Conference Ronald Fiddler, C. P. A., re: audit	½ hr
Apr. 26	Research Disposess action Prepare notice of termination of lease Service of notice of termination on Coder Service Inc., at 420 Hopkins St., Buffalo	2¾ hr
Apr. 27	Mail March rent to Louis Sternberg, trustee Report notice of termination etc to trustee cc: David Goldstein, Esq.	½ hr
Apr. 29	TC David Goldstein, Esq. re Coder lease Letter to Fiddler & Co. re audit & authorizing order	½ hr
Apr. 30	TCs David Goldstin, Esq. TCs Harold Lowe, Esq. TC Louis Sternberg Re: proceedings to evict Coder	1 hr
May 1	TCs to H. Lowe, re: Coder Service Inc eviction or stipulation to cancellation of lease and month to month TC David Goldstein, Esq. re lease research and notes on various cases and court proceedings Registered return receipt letter to Coder return check, reiterate and confirm termination	3½ hr

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May 8	Registered letter to Harold Lowe, Att'y for Coder Service, Inc., returning check and confirming termination of lease	½ hr
May 8	Draft petition to Bankruptcy Court to permit disposess action	½ hr
May 9	Complete petition and proposed order permitting action against Coder in State Cts to recover possession of property and terminate lease Attend to execution of petition by Louis Sternberg, Trustee. File petition and proposed order, obtain copy of order entered	2½ hr
May 10	Research on eviction cases, acceptance of rent, waiver of violations of lease, violations of lease, proof, etc	2 hr
May 16	Letter to Donald R. Gulling, Atty, Albany re: 4th Party Action on Dummond Construction job prior to bankruptcy	½ hr
May 22	Research on right to reject lease	1½ hr
May 22	Received papers, suit against Albert W. Dummond with 4th party liability case against carrier Letter forwarding papers to American Mutual Liability Insurance Company, Letter to Donald R. Gulling, Search of files to ascertain carrier at time, TC to Am. Mut. etc	1 hr
June 6	Organize leases, correspondence Coder Service Inc., to begin Ct. action	1½ hr
June 7	Prepare Notice of Petition, and petition for eviction in State Cts. Attend to execution of petition by trustee. Personal Service of papers on Mr. Campbell Coder Service, Inc. at 520 Hopkins St. Bflo for eviction by State Cts.	4½ hr
June 10	Prepare Coder file, File Coder papers in State Ct. with proof of service, pay filing fees.	1 hr

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June 11 Registered letter to Docer Service Inc. returning check 1½ hr

June 12 Trial on action to evict Coder
Town of Tonawanda
Wm. Coleman, Presiding
Harold Lowe, Esq.
Mr. F. Coder
Coder Service, Inc. Cont'd - June 19th 5 hr

June 13 TC David Goldstein, Esq. A. M.
Office Conf. David Goldstein, Esq. P. M.
re: renewal clauses or options to purchase in leases of Coder Service, Inc. and West End Brewing Co. 1 hr

June 17 Conference, Bankruptcy Court
Hon. Beryl McGuire
David Goldstein Esq.
Harold Lowe, Esq.
L. Robert Leisner, re: option to purchase, etc sale of property 1½ hr

June 20 Prepare riders to lease, eliminating option of renewal, and option to purchase
Prepare stipulations of discontinuance of disposess action 2 hr
Conference, Harold Lowe, Magavern Law Office

June 26 Take Lease modification and Stipulations of Discontinuance to Magavern Law office and obtain signatures, same - Louis Sternberg, Trustee 1½ hr

June 26 Legal research on show cause orders re: preferential transfer - mortgage 4hr

July 2 Conference Harold Bulan, Att'y, re: lists accounts payable for Fiddler accounting firm
TC Harold Lowe, Esq.
Letters to Harold Lowe, Esq. enclosing completed copies of lease riders, and stipulations of discontinuance for Coder Service Inc. 1½ hr

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July 3	Take discontinuance papers Albert W. Dummond Inc v. Coder to Kenmore, File same in Tonawanda Justice Court	2 hr
July 3	Conference, Louis Sternberg, Trustee David Goldstein, Esq. Re: Sale of properties TC Louis Bronstein, Auctioneer Letter to Louis Sternberg, Trustee Enclosing lease modifications-cancellation of options, cc: David Goldstein, Esq.	1½ hr
July 9	TC Harold Lowe, Esq. re: Coder Service rent TC Lewis Bronstein, re: appraisal and auction Kenmore Ave. properties TC David Goldstein, Esq. re: properties	¾ hr
July 15	Rec'd Rent Coder Service Inc Mail July rent to Louis Sternberg, Trustee	¼ hr
July 18	Rec'd letter from Lewis Bronstein, re auction	¼ hr
July 19	TC David Goldstein, Esq. re: Kenmore Ave. prop. 2 TC Edward Brennan, Utica Club, re increase in real property assessment due to brewery sign TC Harold Bulan, Atty, re: Accts. Rec. TC Ronald Fiddler, C.P.A. re: audit	1 hr.
July 22	TC Mr. Brennan, West End Brewing Co. re terms of lease TC assessors' office, re: assessment and Utica Club sign.	½ hr
July 24	Letter from Lewis Bronstein, re: auction TC Louis Bronstein, re: auction & lease TC Town of Tonawanda re assessment	½ hr
July 29	Review A W D papers for June & July Letter to West End Brewery re increased rental for increased assessment for sign	½ hr

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July 30	Correspondence, Albert W. Dummond Inc. Obtaining copies of lease papers, discriptions etc for Lewis Bronstein	½ hr
Aug. 1	TC West End Brewery Mr. Schwartout, assessment	
Aug. 2	Conference Lewis Bronstein, auctioneer, David Goldstein, Esq. Co-counsel, re papers leases, surveys, terms etc	2 hr
Aug. 6	Attend auction, bidding etc. Tentative sales Entire parcel to Golden Large parcel to Sheldon Burrow Smaller parcel to Doran	4½ hr
Aug. 7	TC Haney Erection, re sale of Kenmore Ave. Propety	½ hr
Aug. 8	Conference Hon Beryl McGuire David Goldstein, Esq. Wm. Gardner, Esq. Re: auction and tentative sales	1 hr.
Aug. 9	Conference, David Goldstein, Esq. re sale	½ hr
Aug. 10	Letters and correspondence, Albert W. Dummond, Inc.	½ hr.
Aug. 12	Correspondence and files, Albert W. Dummond, Inc.	½ hr
Aug. 14	Registered letter to W. J. Matt, West End Brewery, re option	
Aug. 22	TC David Goldstein, Esq. re: options etc.	½ hr
Aug. 23	Rec'd letter, W. J. Matt, West End Brewery declaration to exercise option	¼ hr
Sept. 5	TC David Goldstein, Esq. re Matt offers	¼ hr
Sept. 9	Send Coder Service, Inc. rental to Louis Sternberg	¼ hr

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Sept. 13	Rec'd copy of order [illegible]nying confirmation of sale TC David Goldstein, Esq.	¼ hr
Sept. 17	Conf. West End Brewery, options etc TC Harry Wiltse, Re: pref. transfer to M&T	½ hr
Sept. 17	letter to West End Brew. Co; [illegible] Matt., return deposit	¼ hr
Sept. 20	TC accountants, re: accts. rec	¼ hr
Oct. 11	Draw petition for Louis Sternberg to pay taxes Draw proposed order, Attend to execution of petition, file petition and proposed order, obtain copies of signed order Attend to mail, Albert W. Dummond, Inc.	2½ hr
Oct. 14	Obtain checks, Send taxes to Adam R. Rumley	½ hr
Oct. 21	Attend to correspondence, Albert W. Dummond TC rentals, check back records	1 hr.
Oct. 22	letter to Louis Sternberg, trustee, copy of order TC H. Wiltse, re financing and pref. transfer TC Coder Service Inc. re leases and option	1 hr.
Oct. 25	TC Coder Service Inc. re rent	¼ hr
Oct.28	TC Coder Service Inc. re rent Rec'd Audit report TC Ronald Fiddler, C.P.A. re assets, accts. rec	½ hr
Oct. 29	Send letter to Coder Service Inc. demand October rental Send letter with Sept. rental to Louis Sternberg Trustee	½ hr
Nov. 13	Rec'd bill Fiddler & Co	¼ hr
Nov. 14	TC David Goldstein, Esq. re audit & Proceedings to set asside transfer	¼ hr
Nov. 20	Letter to Coder Service Inc. demand for Nov. rent Letter to Louis Sternberg, Esq Enc. Rent & Fiddler Statement	½ hr

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1968		
Nov. 26	TC David Goldstein, Esq. re: negotiations with M & T	¼ hr
Nov. 27	Review and update files Conference David Goldstein, Esq. re: values land and buildings; trade accounts receivable; Set conference date with Wm Gardner and David Goldstein	1½ hr
Dec. 3	Conference: Wm. Gardner, Counsel for M & T David Goldstein, Co-Counsel Discuss actions to set aside prel. & cross motions, possibility of executory agreement	1½ hr
Dec. 6	Letter to Coder for Dec. rent Letter to Louis Sternberg enclosing Nov. rent	½ hr
Dec. 17	TC David Goldstein, Esq. re services of Fiddler & Co	¼ hr
Dec. 18	TC Louis Sternberg, Trustee, re services of Fiddler & Co	

1969

Jan. 13	TC Harold Bulan, Atty, re taxes on real property	¼ hr
Jan. 17	Draw application for order of bankruptcy ct. to pay Fiddler & Assoc. for audit Draw order to accompany application Mail application to Louis Sternberg, Trustee for signature	1½ hr
Jan. 21	Rec'd signed application from Louis Sternberg File application & proposed order in bankruptcy Court. Obtain copy of signed order TC Harold Bulan, Atty	1 hr
Jan 22	Send letter to Coder Service Inc. demand Jan. rent Send letter to Louis Sternberg, Trustee enclosing Dec. Rent	½ hr
Jan 23	Rec'd real property tax bills for properties Town of Tonawanda; TC David Goldstein	¼ hr
Jan 24	Mail order directing payment of Fiddler & Assoc. to Louis Sternberg, Trustee for his record Mail check to Fiddler & Assoc. for payment	½ hr
Jan 28	Prepare application for order to pay taxes Prepare proposed order directing payment of taxes. Take application to Louis Sternberg, Trustee Attend to execution. File application & proposed order in bankruptcy court	2 hr
Jan 29	Rec'd signed order directing payment of real property taxes. Rec'd January rental from Coder Service Inc. Send Letter to Louis Sternberg Trustee enclosing January rent and order directing payment of taxes	1 hr
Feb 3	Attend to Albert W. Dummond mail	¼ hr
Feb. 4	TC Louis Sternberg, Trustee, re: data for tax returns file letter re real property taxes	¼ hr
Feb. 5	Review and update files Albert W. Dummond	¼ hr

1969

Feb. 10	Letter to receiver of taxes enclosing check for Albert W. Dummond property taxes	¼ hr
Feb. 11	TC Louis Sternberg, Trustee, re: Albert W. Dummond taxes, Coder Service Inc. rentals	¼ hr
Feb. 28	Attend to Correspondence, Albert W. Dummond letters re: performance bonds	¼ hr
Mar. 4	TC W. Gardner, Esq. re: taxes etc. Letter to Coder Service Inc. demand for Feb. and March rent	½ hr
Mar. 6	TC Harold Bulan, Atty re Coder rents, etc	¼ hr
Mar. 13	Letter to Louis Sternberg, Trustee, enclosing Feb. and Mar. rentals from Coder Service Inc.	¼ hr
Apr. 14	Conf. H. Bulan, Attorney, re: recivables Albert W. Dummond TC Louis Sternberg, Trustee, re: receivables collected to date	½ hr
Apr. 15	TC Harold Bulan, re: current collections Examine records at Bankruptcy Ct. TC Harold Bulan, Att'y re: receivables TC Louis Sternberg, Trustee, re: receivables TC Bankruptcy Ct. re: filing of various papers in pending file, amounts, dates Assemble data for E B T and for taxes	2½ hr
Apr. 16	Work on Federal tax returns TC W. Gardner, Esq. re: pending E. B. T.	1½ hr
Apr. 21	letter to Louis Sternberg, Trustee, re: tax return letter to Coder, demand for Apr. rent	½ hr
May 7	Letter to Coder Service, Inc., demand for Apr. & May rent	¼ hr
May 14	Rec'd rents Coder Service Inc. Letter to Louis Sternberg, Trustee, encl. rents	¼ hr

1969

June 24 Letter to Coder Service, Inc. demand June rent ¼ hr

July 8 TC demand payment of June and July rental from Coder Service, Inc. ¼

July 23 Rec'd rents from Coder
Letter to Louis Sternberg, Trustee, enclosing June and July rents of Coder Service Inc. ¼

July 25 Conf. David Goldstein, Esq. re: M&T preference action to set aside, cross claims of M & T ½ hr

Aug. 8 Conf. Wm. Gardner, Esq.
David Goldstein, Esq.
M & T mortgage and actions concerning same
TC Harold Bulan, Att'y, re ins. coverages ½ hr

Aug. 11 TC Wm. Gardner, Esq. apt. 2 P. M. Tues.
TC " " re; details of apt/ ¼ hr

Aug. 12 TC Wm. Gardner, Esq.
TC David Goldstein, Esq. confirm apt.
Conf. preparation, assemble data & documents
Conference: Wm. Gardner Esq., counsel for M & T
David Goldstein, Esq. Co-counsel for
Albert W. Dummond, Inc. Bkpt.
Mr. Padett of M & T
TC Bankruptcy Ct. re: records
TC David Goldstein, Esq. discuss facets of conf. 3¼ hr

Aug. 14 Review papers on M & T actions ½ hr

Aug. 15 Letter to Coder Service Inc. demand Aug. rent ¼ hr

Aug. 18 Rec'd letter from Wm. Gardner, 6 pages terms of offer of settlement on behalf of M & T to be treated in confidence and only revealed if stipulated. Study & analyze terms & net result.
TC David Goldstein, Esq. re: terms of M & T letter
Send copy of M & T offer to David Goldstein 3 hr

Aug. 19 Rec'd notice of deposition from Wm. Gardner on behalf of M & T
TC David Goldstein, Esq. re: 6 page offer ¼ hr

1969

Aug. 27 Review 6 page offer of M & T and draft points in question for further negotiation 2½ hr
Confer with David Goldstein Esq. re reply

Aug. 28 Prepare outline of letter to Wm. Gardner, Esq. replying to M & T offer
TC David Goldstein, Esq. re: M & T proposal ¼ hr

Aug. 29 Rec'd Coder rent. Mail August check to Louis Sternberg, Trustee
Complete letter to Wm. Gardner, Esq.,2 page, and mail same; request early further conferences
Mail copy of Gardner letter to David Goldstein, Esq. 1½ hr

Sept. 5 TC David Goldstein, Esq re: conf. Monday concerning M & T negotiations ¼ hr

Sept. 8 TC Mrs. Walsh re Court records
TC David Goldstein, Esq. re: papers for meeting
Conference David Goldstein at his office
Trip to Wm. Gardner law office, further confer with David Goldstein, Co-Counsel, Wm. Gardner delayed on Thruway 1¼ hr

Sept. 9 Conference: Wm. Gardner, Att'y for M & T
Donald Radett, official of M & T
David Goldstein, Co-Counsel
negotiations on preferential lien 2 hr

Sept. 12 Confer with David Goldstein, Esq. at his office, obtain copy of proposed stipulation by M & T . Study same and research details with office file
TC David Goldstein,re: Conf. Mon 9/14 ¼ hr

Sept. 15 TC David Goldstein, Esq. re: Meeting with Wm. Gardner, Atty for M & T
TC Harold Bulan, re: accts. rec. ½ hr

Sept. 16 Conf. David Goldstein, Esq. at his office
Signing of stipulation by David Goldstein and Robert Leisner, as Co-counsel of Albert W. Dummond, Inc.
Conference at Wm. Gardner's office
TC David Goldstein, re: initials for details, 1)taxes 2)leases 3) notices to creditors 2½ hr

1969 CB

Sept. 19	Letter to Coder Service Inc demand Sept. rent	¼ hr
Sept. 22	Attend to Albert W. Dummond correspondence update files, Rec'd notice of meeting of creditors for Oct. 6 Meeting of creditors	¼ hr
Sept. 29	TC Floyd Coder, Coder Service Inc. re: rentals	¼ hr
Oct. 6	Creditors meeting, Bankruptcy Ct. Appearance: Bankruptcy Court with Co-counsel, David Goldstein, Louis Sternberg, Trustee, Attorney & officer from M & T. Re: proposed stipulation and order, also 1) prop. taxes, 2)insurance 3) rentals 4) Federal tax matters	2½ hr
Oct. 8	Letter to Coder Service for Oct. rent	¼ hr
Oct. 15	TC Chas. Rayo, Arc Electric	¼ hr
Oct. 17	Rec'd notice about rent, letter from Wm. Gardner Letter to Arc Electric on behalf of Albert W. Dummond	¼ hr
Oct. 22	Rec'd copy of 2 page letter from Wm. Gardner, Atty for M & T; copy of court order Review same	½ hr
Oct. 27	Letter to Louis Sternberg,enclosing $1200.00 September and October rentals, Coder Service Inc.	¼ hr
Oct. 27	TC Louis Sternberg, Trustee, re: West End Brewery current checks, endorse to M & T when order is signed	¼ hr
Nov. 7	TC David Goldstein, Esq. re: signed order confirming stipulation with M & T	¼ hr
Nov. 10	TC Louis Sternberg, Trustee, re rentals & order TC David Goldstein, Esq. " "	¼ hr
Nov. 12	TC Wm. Gardner, Att'y for M & T re: rentals TC Louis Sternberg, Trustee re: rentals Letter to Coder Service Inc. re: new payee, rentals " " West End Brewery Carbon copies to Louis Sternberg, Wm. Gardner etc	1¼ hr

1969
Nov. 17 Rec'd Letter from Wm. Gardner re: Nov. rental from West End Brewing Co.
TC Wm. Gardner, Att'y re: Nov. rentals ½ hr

End of 1969

1970		
Jan. 27	Received Form 1099 Marine Mid. Inc. Tax Form	
Jan. 30	Received Form 1099 West End Inc. Tax Form	¼ hr
Feb. 3	Conf. T. O'Neil, Spec. Proc., U. S. Int. Rev. Re: req. for early audit	½ hr
Feb. 4	Review filings for prior years	½ hr
Feb. 5	Tax preparation	1 hr
Feb. 6	Tax preparation	½ hr
Mar. 5	Obtain zerox copies of State and Fed. returns	½ hr
Mar. 20	Research section to request early audit Prepare letter requesting early audit and file same, obtaining stamped receipted copy of same	1½ hr
Apr. 14	Obtain acknowledgement of req. for early audit from Mass.	¼ hr
Apr. 29	File N. Y. State Tax	¼ hr
Apr. 30	obtain zerox copy of State Schedule	¼ hr
May 7	Rec'd letter from I. R. S. for captions and I D nos.for earlier returns	¼ hr
May 11	Locate prior returns and I D nos. and mail to I. R. S.	½ hr
June 10	TC Louis Sternberg, Trustee, re: returns filed	¼ hr
June 12	Letter encl. photostats of prior returns	½ hr
June 22	Deliver certificate of membership for Ellicott Club to David Goldstein, Esq.	¼ hr
Nov. 20	TC Auditor, I. R. S. re: returns	¼ hr
Nov. 21	Obtain photostats of financial statements and	½ hr
Nov. 23	mail to auditor, 1967 and 1968 photocopies	½ hr
Dec. 9	Rec'd letter from Louis Sternberg, re report	¼ hr
Dec. 11	TC J. Lamprecht, re: audit	¼ hr
Dec. 15	TC J. Lamprecht, re: audit Letter from D. Goldstein, Esq. re: status report	¼ hr
Dec. 28	TC David Goldstein, Esq. re: taxes TC Harold [illegible]an, Atty re: collection files	½ hr

1971		
Feb. 4	Rec'd Federal Form 1099's Statements of inc. from David Goldstein	¼ hr
Mar. 8	TC Louis Sternberg, Trustee for 1969 return	¼ hr
Mar. 10	TC Agent Lamprecht, for schedules of 1969 return	¼ hr
Mar. 12	TC Agent Lamprecht, return accepted as filed	
Mar. 14	Preparation of U. S. Return	
	Preparation of N. Y. Return	1½ hr
Mar. 15	Filing of Returns	¼ hr
Apr. 20	TC Louis Sternberg, Trustee re taxes	½ hr
	Conf. T. O'Neil, Spec. Procedures	
Apr. 26	Conf. H. Bulan, Att'y, D. Iwanicki, Att'y re: Accts. Rec.	½ hr
various times later in 1971	Conf. H. Bulan, Att'y, Donald Iwanicki, Att'y re: pending litigation	1 hr.

1972

Jan. 28	Received information for 1971 tax returns	¼ hr
Mar. 14	Preparation of tax returns and filing State and Federal returns	2 hr
May 26	Listing of Accounts rec and various data from Bankruptcy schedules	
	Obtain copy of letter dated Dec. 11, 1970 Stark Construction, OC, Harold Bulan, Att'y	½ hr
May 26	Conf. Banruptcy Ct. Hon Beryl McGuire, re: closing	½ hr
June 1	Letter to Louis Sternberg, Trustee enclosing copies of tax returns, copy of Stark letter and closing of bankruptcy	1 hr
June 7	TC Louis Sternberg, Trustee re: no tax, tax returns, TC George Navagh, Att'y re: Stark Construction, closing	½ hr
June 14	Letter From Harold Bulan, Att'y re Trustee and tax audit	¼ hr
June 30	Letter from Harold Bulan, Atty re: tax locator filing No.	¼ hr
June 30	Returned locator documents to I R S center	¼ hr
July 6	Conf. G. Navagh, re: Stark Construction	¼ hr
Sept 5	TC G. Navagh, re Stark Construction	¼ hr
Oct. 16	TC Louis Sternberg, Trustee, re:Stark Const. TC Harold Bulan, Att'y re: Stark Const	½ hr
Oct. 20	Conf. David Goldstein, Esq., re Stark Const.	¼ hr
Dec. 18	Rec'd letter and papers on Stark Const. from George Navagh	¼ hr

1973		
Jan. 23	Rec'd information for tax returns	¼ hr
Mar. 14	Preparation and filing of U. S. and N. Y State Tax returns	1½ hr
Various times in 1973	TC s and conf. George Navagh re: Stark Construction	1 hr.
May 30	Rec'd inquiry from Harold Bulan, Att'y	¼ hr
June 11	Letter to Louis Sternberg, Trustee, re 1962 Tax returns	¼ hr
Nov. 28	Conf. Harold Bulan, Atty, re: closing of bankruptcy estate	½ hr
1974		
Jan. 30	Received information for tax returns	¼ hr
Mar. 14	Preparation of N. Y. State and Federal income tax returns	1 hr
Mar. 15	Obtain zerox copies, confer with Louis Sternberg execution of returns, delivery of various copies, of other years to L. Sternberg; file current returns obtaining stamped receipts for copies of same	1 hr.
Apr.	Request for early audits, attending to closing audits and tax affairs	3 hrs
	Attending closing conferences , final meeting of creditors and closing affairs estimate	6 hrs

Time Recap

1966	30.5 hrs
1967	84.10
1968	111.25
1969	44.25
1970) 1971) 1972)	23.25
1973) 1974)	14 hrs
Total 1966 - 1974	308.35 hrs

Schedule B Time Recap

EYE EASE 45-812
20/20 BUFF 45-912

	Initials	Date
Prepared By		
Approved By		

Schedule C

Cash disbursements
Albert W. Drummond.
Bankruptcy.

postage, service of papers, court filing fees, photo copies, certified copies etc.

1966	$ 30.50
1967	84.10
1968	111.25
1969	44.25
1970-1973	23.25
1974	14.00
Total Disbursements	$ 307.35

From original records and papers kept in the regular course of business.

Schedule C.

	Initials	Date
Prepared By		
Approved By		

EYE EASE 45 812
20/20 BUFF 45 912

Schedule D:

Principal factors for
Receipt of assets:

Real property litigation:		
West End Rentals	3900000	
Coder "	2337543	
Cash payment M+T	2445488	
		8683335
Accounts Receivable		3542967
Refunds prepaid items Sale Personalty etc and interest on funds deposited		306384
Assets Received		$ 15294686

Schedule "D"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

ALBERT W. DUMMOND INC.

BK-66-1499

Bankrupt

SUPPLEMENT TO PETITION AND REPORT OF LEGAL SERVICES

TO: HON. BERYL E. McGUIRE, Referee in Bankruptcy

The petition of L. ROBERT LEISNER respectfully shows the Court as follows:

PREVENTED FROM TAKING OTHER EMPLOYMENT

The legal work on the bankrupt's caused petitioner great economic hardship and prevented petitioner from taking other jobs and work for the period of 1967 to mid 1970. Your petitioner was burdened with indigent work and time consuming cases in the State and Federal Courts at this time. Examples of work at that time: Stephanie Bauer v. Foley, Dist. Dir. & U. S., appeal 2nd Cir. with reargument in 2nd Cir.; U. S. ex rel DeFlumer v. Mancusi Warden, Attica (14 yr. old child on life sentence) appeals to 2nd Cir.; others-interstate thefts etc.; People v Sam Edward Hibbitt, coram nobis, life sentence, Attica, Ct. of Appeals.

Your petitioner suffered great economic hardship at this time, petitioner's wife worked daily in other work, and petitioner would have taken a job in other law work and left private practice, but the work on the bankrupts case with the M & T on the preferential mortgage prevented petitioner from taking other employment. As soon as the M & T mortgage litigation was concuded in late 1969, your petitioner made job applications. Your petitioner requested early tax audits in 1970 and in June 1970 your petitioner took a civil

service job in Albany, New York as a State Tax Hearing Examiner to conduct hearings of tax litigation on circuit hearings in the principal cities of New York State. Internal Revenue Service audits took place in 1970 and 1971 and in 1971, reports of no change for the bankrupt for the years 1967, 1968, and 1969 were issued by the Internal Revenue.

Meanwhile the banruptcy was prolonged by some construction litig--ation in the metropolitan New York City area, and further Federal and State Income Tax Returns were required for the years 1970, 1971, 1972 and 1973. There was considerable effort to close the bankruptcy and the Stark construction litigation by co-cousel during that time. Finally the litigation was closed, and reports and applications for fees were made in April, 1974.

ADDITIONAL TAX WORK AFTER THE FINAL REPORT OF APRIL 1974

After the reports and fee applications were made to this Court in April 1974, the trustee requested your petitioner to also obtain final audits and no change letters from the Internal Revenue Service for the later years 1970 through 1973. Your petitioner undertook this additional tax work and obtained reports of no change, for all later open years, which the Internal Revenue Service issued in 1975 to the bankrupt.

ADDITIONAL CLOSING WORK AFTER THE FINAL REPORT OF APRIL 1974

Also after the report and fee applications were made to this Court, your petitioner in discussions with the closing clerk learned that orders in 1966 and 1967 prior to petitioner's work or the present clerk's work, which orders were for numerous wage earners, for many union funds, for State Labor Dept. applications and for administration work were not in harmony or needed reconciliation and interpretation for proper closing. During December 1974 and January 1975 your petitioner

came to the Court and worked on these matters with the closing clerk and thereafter with Mr. Bulan to get the closing arrangements and distribution into shape. Still later in April 1975 at the final meeting of creditors, Mr. and Mrs. George Waldron and Mrs. James G. Lyons appeared with unresolved priority claims and your petitioner worked a considerable amount of time with Mr. and Mrs. Waldron, Mrs. Lyons and the closing clerk to reconcile the old records and claims and orders and obtain correct and just settlemnts of their priority claims and waiver of residual general claims, and to report the same to the Court for approval and to coordinate the results with Mr. Bulan for confirming papers to be prepared. There was no opposition by creditors to deponents petition and report of legal services.

CONCLUSION

The facts that (1) your petitioner was prevented from taking other full time employment from 1966 until 1970, (2) that much additional legal work has been involved since filing the report over a year ago, (3) that special expertise was required on the Tax work throughout the years, and (4) no creditor opposed petitioner's petition and report of legal services , - are all further and compeling considerations supplementing and supporting your petitioner's original petition and report of legal services.

Your petitioner renews his request for compensation and requests the Court's consideration of these additional facts in acting upon petitioners original petition and report of legal services.

Affirmed pursuant to the Federal Rules of Civil Procedure as an Attorney on May 2, 1975.

L. Robert Leisner

1 Arundel Rd. Buffalo, N. Y. 14216
838-2393 or Albany AC 518-457-2657

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

ALBERT W. DUMMOND INC.

BK-66-1499

Bankrupt

TO: HON. BERYL E. MCGUIRE, Bankruptcy Judge:

The petition of DAVID J. GOLDSTEIN, respectfully represents:

1. That your petitioner is a member of the firm of GOLDSTEIN, NAVAGH & BULAN formerly known as GOLDSTEIN & NAVAGH, which firm is co-attorney for Louis Sternberg, Trustee of the estate of the above named bankrupt and makes this application for allowance of compensation for professional services rendered and for reimbursement for actual necessary costs and expenses incurred by your petitioner in rendering such services.

2. On the 1st day of December, 1966, your petitioner's firm was employed and appointed under a general retainer as co-attorney for Louis Sternberg, the Trustee in the within proceeding pursuant to an order herein on the same date authorizing such retention and employment.

3. The services for which compensation is requested were performed for and on behalf of the said Trustee and not on behalf of any committee, creditor or other person.

4. Your petitioner has rendered professional services to the said Trustee since his appointment on the 1st day of December, 1966, as follows:

A. It was the contention of the Trustee that the Manufacturer's & Traders Trust Company had obtained a preference by receiving and recording a mortgage on a piece of real property

belonging to the bankrupt, said mortgage being given for an antecedent debt. The transfer involved over $100,000. In order to lay the necessary ground work for the Trustee's position your deponent, on January 10, 1968, conducted an extensive examination, on the record, of the principal of the bankrupt corporation. A transcript of said exam was received by your deponent and studied carefully. As a result of the foregoing exam your deponent prepared a petition and show cause order on the 21st of February, 1968, returnable on the 28th of February, 1968, directing the Manufacturer's & Traders Trust Company to show cause why said preference should not be set aside. On March 12, 1968, an answer was received on behalf of the respondent in the form of a general denial and a notice of deposition was served upon the Trustee and the principal officer of the bankrupt along with a notice to produce various books and records. It was necessary to obtain an adjournment of the deposition in order to do research in reference to the matter and to assemble documents. On March 19, 1968, your deponent was served with a lengthy amended answer and affirmative defense and counterclaim on behalf of the Manufacturer's & Traders Trust Company.

During the period of the litigation involved the Trustee was collecting rents from the tenants occupying the premises subject to litigation. The annual rental collected by the Trustee was in excess of $19,000 yearly.

On or about the 20th day of March, 1968, the Trustee was served with a show cause order requesting a directive ordering the Trustee to pay, out of the rents collected, all outstanding taxes on the premises prior to March 31, 1968.

Your deponent appeared on March 25, 1968, the return date of the above show cause order, in opposition thereto. After hearing was had and negotiations entered into an order and indemnification Agreement were entered. Tax payments were made pursuant to the order and in turn certain guarantees were given the Trustee by the Manufacturer's & Traders Trust Company.

On or about the 8th day of April, 1968, your deponent was once again served with a show cause order by the Manufacturer's & Traders Trust Company, returnable on April 15, 1968, requesting that an order appointing an auctioneer to sell the real property in dispute, be set aside. On the return date said order was set aside and a new auctioneer was appointed.

In order to hold the sale of the property it was necessary to show cause the two tenants as to why the Trustee should not be permitted to sell said property free and clear of an alleged option to purchase claimed by the tenants.

A sale of the property was eventually scheduled for the 6th day of August, 1968. Your deponent attended the sale which brought a high bid of $85,000, a figure less than the mortgage held by the Manufacturer's & Traders Trust Company. The Trustee and the mortgagee were in agreement that the bid price was too low and recommendation was made that the sale not be confirmed. After a hearing was held an order was entered denying confirmation.

From the inception of these bankruptcy proceedings in August, 1966 until September 1969, the Trustee had been collecting rents from the two tenants at the rate of approximately $19,000 per year.

On September 9, 1969, one in a long series of conferences

took place between your deponent, representatives of the Manufacturer's & Traders Trust Company and their counsel. At this meeting a settlement of the Trustee's action was agreed upon as follows: (A) the Trustee was to retain rents collected upon the property through October 31, 1969 ; (B) the rustee is to receive an additional $25,000 cash in compromise of his law suit against the Bank; (C) Trustee to pay school tax prorated to October 1, 1969 and (D) the Bank waived right to file proof of claim on any deficiency resulting from its foreclosure of the mortgage. A stipulation of said agreement was prepared, signed by the parties and Court approval was obtained. That your deponent spent 46 hours of time on this aspect of the case.

That in addition to the above your deponent spent, in telephone calls, conferences with various parties, correspondence, etc. an additional 7 hours of time for a total time spent on this aspect of the case of 53 hours.

B. The principle asset of the bankrupt beside the real property, was various accounts receivable. Many of these accounts were subject to offsets, charge backs and disputes as follows:

(1) Dummond Metal Window Erection ($43,292.24) - judgment was entered against debtor on behalf of Trustee. Debtor assetless and defunct - no recover. Time Spent: 1 hour.

(2) Tremans Plastics - suit instituted on behalf of Trustee - disputed by debtor, claimed damages done by bankrupt. Amount involved did not warrant trial. Order of abandomnent filed February 16, 1970; discontinued action. Time Spent : 1-1/2 hours.

(3) Valley Metal Products - This rather sizeable account had been sent to counsel in Albany, New York by the bankrupt, prior to the bankruptcy. Attorneys in Albany commenced suit on the bankrupts behalf. The major portion of the claim consisted of about $18,000 in extras allegedly done by the bankrupt. There was considerable dispute as to the authorization and quality of the extra work done. Much correspondence and documentation was exchanged between your deponent's office and Albany counsel. Finally an offer of settlement in the sum of $5000 was received from the defendant. A petition was prepared by your deponent and notice was sent to creditors re the proposal settlement. On the return date the settlement was approved and an order prepared. Time Spent: 5 hours.

(4) A. E. Architectural Inc. - claim for $4652 for work done at Pottsdam, New York. Suit commenced in Supreme Court, Erie County on February 7, 1968. The defendant answered claiming non-completion by the bankrupt and counter-claimed for $16,907 costs of completion. Defendant also demanded a bill of particulars. Your deponent conferred with the principal of bankrupt and it was felt that it was not feasible for the Trustee to pursue the matter further and an order abandoning the account was signed by the Court on February 18, 1970. Time Spent: 4 hours.

(5) Arc Electrical Construction Co. - $120.75 owed,offset by debt owing to them.

(6) Asco Window Corp. - $937.17 - owed, suit instituted by the Trustee, judgment recovered and execution issued to Nassau County Sheriff, result of which a settlement was reached with debtors attorneys, netting the Trustee $522.50. Time Spent : 2 hours.

(7) B. C. S. Supply Co. Inc. - claim offset by indebtedness owing by bankrupt.

(8) Avenue Building Corp. - $1730.94 - debtor claimed offset - on various jobs - in effort to avoid litigation it deemed feasible to settle the account for $852.52 and an order of compromise was prepared and signed. Time Spent : 1.5 hours.

(9) Bethlehem Steel - paid to Trustee

(10) Belcon's Inc. - Suit commenced on behalf of Trustee, answer interposed setting up defense of completion costs in excess of amount owed. Matter was discussed fully with Mr. Dummond and it was decided that the Trustee had no feasible course of action but to abandon the asset. Such an order was filed on February 18, 1970. Time Spent : 3 hours.

(11) Bouley, Inc. - settled for $80 order of compromise filed June 30, 1967. Time Spent : .5 hours.

(12) Bradco Products Inc. - Matter had been sued in Supreme Court by bankrupts attorney prior to bankruptcy. Bradco Products Inc. filed a petition under Chapter XI. A proof of claim was filed on behalf of the Trustee. Bradco's attorney disputed the amount; a compromise was reached and eventually the Trustee received a dividend from the Court. Time Spent : 3.0 hours.

(13) Bradley & Sons - settled with debtor for $40 on claim of $74.88. Time Spent : .5 hours.

(14) Butler Building Products - contested and not worth suing for amount involved, $264.71. Time Spent : .5 hours.

(15) John W. Cooper Co. - Disputed, settled for 50%, order of compromise prepared and filed January, 1967. Time Spent : .5 hours.

(16) Cupples Products Corporation - disputed

vigorously, decision made not to pursue. Time Spent : .5 hours.

(17) Decker Construction Co. - Public Improvement lien was filed by your deponent on behalf of the Trustee. An offset of $90 was claimed by the contractor. The matter was settled and payment made by the State to the Trustee. Order of compromise prepared and filed March 13, 1967. Time Spent : 3 hours.

(18) W. B. Eaton Construction Co. Inc. - paid in full. Time Spent : .5 hours.

(19) Eastern Sash Engineering Corp. - settled prior to your deponent receiving the account.

(20) Fox Steel Co. & Hankens & Johnson - disputed, bankrupt owed them money. Time Spent : .5 hours.

(21) E. K. Guper Company - claim in the amount of $1611 was partially disupted - compromise arrived at and Trustee received $1391 in full settlement. Order of compromise prepared and filed August 28, 1967. Time Spent : 1.5 hours.

(22) J. M Hawkins Corp. - back charge offset money owed to bankrupt. Time Spent : .5 hours.

(23) Hendrek Construction - paid in full. Time Spent : .5 hours.

(24) Henter Construction Co.- suit instituted by your deponent on behalf of the Trustee; an answer was received and demand for bill of particulars made. Negotiations were instituted and a settlement reached. An order of compromise was prepared, filed and signed and the settlement funds received. Time Spent : 2.5 hours.

(25) Hines & Kirst Inc. - $1680.08, paid in full. Time Spent : .5 hours.

(26) B. R. Johnson & Son - ignored demand letter; $28 account.

(27) Keystone Builders Supply - paid in full on demand.

(28) William E. Kraetz - offset by backcharges. Time Spent : .5 hours.

(29) The Le Cesse Corp. - $650, after negotiation with the debtor a settlement offer of $521 was recommended to the Court. An order of compromise was prepared and signed on August 23, 1967. Time Spent : .5 hours.

(30) Michaels Art Bronze Co. - $143.91, after negotiations with the attorneys for the debtor, settlement for $200. Order of compromise prepared and filed January 6, 1967. Time Spent: .5 hours.

(31) Jack Monroe (note receivable $370) - suit was instituted on behalf of the Trustee, answer received, motion for change of venue made by debtor's attorney. Conference was had with debtor's attorney and an offer of settlement made in the sum of $195. Petition and order of compromise was submitted to the Court and approved on December 20, 1967. In addition general releases were exchanged. Time Spent : 2.0 hours.

(32) David Messert - ($451.07), suit instituted on behalf of Trustee, an answer was received and a note of issue filed putting the matter on the trial calander. Negotiations prompted a settlement of $75. Time Spent : 2 hours.

(33) Pitney-Bowes - obtained refund check from Post Office.

(34) James D. Riddids - demand made received payment in full.

(35) Semet-Solvay Company - $6293.45, demand made, payment in full received. Time Spent : 5 hours.

(36) Harvey Tubin Construction Co. - demand made, payment received.

(37) Santora Construction Co. - filed bankruptcy proof of claim filed on behalf of the Trustee. No dividend

order abandoning account filed May 19, 1970. Time Spent : 1.0 hours.

All told your deponent spent in excess of 37 hours of time as specifically set out above in attempting to liquidate the bankrupt's accounts receivable. In addition your deponent received numerous telephone calls and written correspondence concerning various accounts not set out above and had numerous conversations with the Trustee concerning various accounts totaling an additional 6 hours, for a grand total of 43 hours spent on this aspect of the case.

C. Because of the nature of the business the bankrupt was involved in and the size of its operations a great number of claims were filed in these proceedings, many claiming a priority status. It was necessary for your deponent to ivestigate and examine the various claims filed and in a number of instances it was necessary to object to the claims so filed.

(1) Examination revealed that the Internal Revenue Service and the Michigan Employment Security Commission had filed proofs of claim totaling about $10,000 which in fact were obligations of Dummond Metal Window Erection Corporation and not the bankrupt. Therefore a show cause order was prepared and issued directing the respective tax agencies to show cause why their claim should not be disallowed. On the return date, January 25, 1967, the Trustee's relief was granted. Formal orders disallowing the claims were filed on February 16, 1967. Time Spent: 4 hours.

(2) Further examination of the claims caused objections on behalf of the Trustee to be filed objecting to some 25 different claims filed by various creditors. The objections were set down for hearing on April 5, 1967 as a result of which

an order was filed on April 14, 1967 setting out the results of the Trustee's objections in specific detail. Orders allowing payment were made, orders disallowing claims and setting priorities were also included. Time spent : 8 hours.

(3) On May 24, 1967, because of the complexity of the situation, it was necessary to enter an order amending the order granted on April 14, 1967, concerning the claims objected to by the Trustee. Time Spent: 2 hours.

(4) In addition another amending order was also filed on May 24, 1967, directing payment on certain enumerated claims and order the Clerk of the Court to mark paid certain order claims, pursuant to an order of October 24, 1966. Time Spent : 3 hours.

(5) That on May 24, 1967, your deponent caused to have issued a show cause order directing various named parties to appear and show cause why a proposed order, agreed upon through lengthy negotiations, should not be approved. Time Spent : 3 hours.

(6) On July 31, 1973, the Trustee filed final objections to 8 claims in the above estate. A hearing was had on these objections on the 27th day of August, 1973 and a final order filed on the matter. Time Spent : 4.0 hours.

That all told your deponent spent in excess of 24 hours of time on this aspect of the case.

5. Further your petitioner spent in general and other matters of this bankruptcy, including answering innumerable phone calls and correspondence from various creditors and the like, the sum of 10 hours.

6. In addition it will be necessary for your deponent to be present at the final meeting of creditors and to prepare

the final order of payment in this estate. Estimated time spent: 6 hours.

7. Your petitioner appeared and acted generally and more particularly as set forth above during the pendency of this proceeding and spent in excess of 136 hours of time in performance of the above mentioned services. It is your deponents belief that the services rendered the Trustee, especially those connected with the alleged preferential transfer to the Manufacturer's & Traders Trust Company were in a large degree responsible for the creation of the estate in tnis matter and that it required a great deal of effort on behalf of your deponent and his associates.

8. That a reasonable value of said services rendered by your petitioner as co-attorney for the Trustee in this proceeding is of the value of $8000.

WHEREFORE, your petitioner prays for an allowance to be made to him in the sum of $8000 and that he may be reimbursed for his disbursements in the amount of $45.50.

David J. Goldstein

STATE OF NEW YORK :
COUNTY OF ERIE : SS
CITY OF BUFFALO :

I, DAVID J. GOLDSTEIN, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements of fact contained in the foregoing petition are true to the best of my knowledge, information and belief.

David J. Goldstein

Sworn to before me this
24th day of October, 1973

HAROLD P. CULAN
Notary Public, State of New York
Qualified in Erie County
My Commission expires March 30, 19...

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

ALBERT W. DUMMOND INC.

BK-66-1499

Bankrupt

STATE OF NEW YORK :
COUNTY OF ERIE : SS
CITY OF BUFFALO :

DAVID J. GOLDSTEIN, being duly sworn, deposes and says:

That he is the co-attorney for the Trustee herein, duly acting as such.

That your deponent makes this supplemental affidavit for the purpose of complying with Section 62d of the Bankruptcy Act.

That your deponent has made no agreement or understanding with any person having to do with the division of his compensation or fees, nor has your petitioner made any such agreement in any form or guise, nor has your petitioner agreed to share his compensation or fees nor does he intend to do so.

David J. Goldstein

Sworn to before me this
24th day of October, 1973.

HAROLD P. EULAU
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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In the Matter	:	
-of-	:	No. BK 66-1499
Albert W. Dummond, Inc.,	:	
Bankrupt	:	

TO: HON. BERYL E. McGUIRE, Referee in Bankruptcy:

The final report and account of Louis Sternberg, Trustee herein, respectfully shows:

That your Petitioner was duly appointed Trustee herein; qualified by filing the required bond and has since acted as such. That the estate is substantially reduced to cash and is ready to be closed. That various payments out of the monies received were made by the undersigned Trustee pursuant to Order of this Court.

That the final account of the undersigned Trustee, duly verified, is attached hereto.

That Schedule "A" of said account shows all monies received by me and coming into my hands.

That Schedule "B" of said account contains a statement of all monies disbursed by me.

All of which is respectfully submitted.

Dated: November 27, 1973

/s/ Louis Sternberg
Louis Sternberg, Trustee

FINAL ACCOUNT

The following is the final accounting of the undersigned Trustee:

RECEIPTS

Received from the West End Brewing Co. of New York the following rent payments:

August, 1966	$1,000.00
September, 1966	1,000.00
October, 1966	1,000.00
November, 1966	1,000.00
December, 1966	1,000.00
January, 1967	1,000.00
February, 1967	1,000.00
March, 1967	1,000.00
April, 1967	1,000.00
May, 1967	1,000.00
June, 1967	1,000.00
July, 1967	1,000.00
August, 1967	1,000.00
September, 1967	1,000.00
October, 1967	1,000.00
November, 1967	1,000.00
December, 1967	1,000.00
January, 1968	1,000.00
February, 1968	1,000.00
March, 1968	1,000.00
April, 1968	1,000.00
May, 1968	1,000.00
June, 1968	1,000.00
July, 1968	1,000.00
August, 1968	1,000.00
September, 1968	1,000.00
October, 1968	1,000.00
November, 1968	1,000.00
December, 1968	1,000.00
January, 1969	1,000.00
February, 1969	1,000.00
March, 1969	1,000.00
April, 1969	1,000.00
May, 1969	1,000.00
June, 1969	1,000.00
July, 1969	1,000.00
August, 1969	1,000.00
September, 1969	1,000.00
October, 1969	1,000.00
	$39,000.00

Received from Coder Service, Inc. the following rent payments:

August, 1966	$ 600.00
September, 1966	600.00
Oct. - Nov., 1966	1,178.47
December, 1966	600.00
January, 1967	600.00
February, 1967	600.00
March, 1967	600.00
April - May, 1967	1,200.00
June, 1967	600.00
July, 1967	600.00
August, 1967	600.00
September, 1967	600.00
October, 1967	600.00
November, 1967	600.00
December, 1967	600.00
January, 1968	600.00
February, 1968	600.00
March, 1968	600.00
April, 1968	600.00
May, 1968	600.00
June, 1968	600.00
July, 1968	600.00
August, 1968	600.00
September, 1968	600.00
October, 1968	600.00
November, 1968	600.00
December, 1968	600.00
January, 1969	600.00
Feb. - March, 1969	1,200.00
April - May, 1969	1,200.00
June - July, 1969	1,200.00
August, 1969	600.00
Sept. - Oct., 1969	1,200.00
	$23,378.47

Received from the following parties in full payment or settlement of accounts receivable and/or judgments:

Allied Chemical Corp.	$2,809.91
Bethlehem Steel Corp.	128.37
Cassiol Construction Co.	1,148.00
Bethlehem Steel Corp.	186.48
Western Electric Co.	994.90
Bethlehem Steel Corp.	997.55
Buffalo Envelope Co., Inc.	63.50
The Ceco Corporation	2,856.60
The John W. Cowper Co.	153.43
W.B. Eaton Construction Co., Inc.	1,170.00
Shirley Construction	88.40

Allied Chemical Corp.	$3,483.54
American Mutual Liability Insurance Company	156.03
Western Electric Company	1,329.12
H. Tubin Construction Co., Inc.	70.00
H. Tubin Construction Co., Inc.	70.00
Bethlehem Steel Corp.	181.68
Dunlop Tire & Rubber Corp.	353.60
Metzger Construction Corp.	133.34
Stimm Assoc.	714.50
West End Brewing Co.	657.41
Western Electric Company	559.64
H. Tubin Construction Co., Inc.	70.00
Hines & Kirst, Inc.	1,680.80
Siegfried Construction Co., Inc.	450.00
Hendrich Construction, Inc.	62.88
Eastern Sash Engineering Corp.	182.74
Louis Viele, Inc.	66.22
H. Tubin Construction Co., Inc.	70.00
Oldfield Construction Co., Inc.	155.00
H. Tubin Construction Co., Inc.	70.00
Truckenbrod & Co., Inc.	536.70
W.B. Eaton Construction Co.	125.00
Michaels Art Bronze Co.	200.00
Avenue Building Corp.	852.52
H. Tubin Construction Co., Inc.	70.00
H. Tubin Construction Co., Inc.	70.00
Homer Roodenburg	750.00
Bradley & Sons, Inc.	50.00
Keystone Builders Supply Co., Inc.	21.46
H. Tubin Construction Co., Inc.	70.00
H. Tubin Construction Co., Inc.	70.00
John W. Cowper Co.	170.44
Decker Construction Corp.	435.00
Eastern Sash	44.00
James Reddi	85.00
H. Tubin Construction Co., Inc.	70.00
Henter Construction Corporation	210.98
William E. Bouley Co., Inc.	79.81

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H. Tubin Construction Co., Inc.	$ 70.00	
H. Tubin Construction Co., Inc.	70.00	
LeCesse Corporation	521.09	
H. Tubin Construction Co., Inc.	70.00	
H.K. Geyser Company	1,391.10	
H. Tubin Construction Co., Inc.	70.00	
John Monroe	195.00	
Iraico Products, Inc.	730.81	
Lynn and Proskin	5,000.00	
Asco Window Corp.	522.50	
David Kissert	75.00	
Mauser, et al.	999.62	
Rollison Construction Sales	650.00	
Manufacturers and Traders Trust Company (Discount Department) settlement of preferential mortgage claim	24,454.88	$ 59,834.55
Received from Lewis Bronstein - proceeds of public auction sale		4,959.50
Received from U.S. Treasurer - refund on postage		31.02
Received from Petrella Agency, Inc. - refund regarding two cancellations of Travelers bonds		51.00
Received from American Mutual Liability Insurance Co. - return premium		407.00
Received from Connecticut Mutual Life Insurance Co. - full payment for Trustee's interest in insurance policy		742.23
Received from American Mutual Liability Insurance Co. - return premium		19.04
Received from American Mutual Liability Insurance Co. - refund of premium		64.75
Received from John Hancock Mutual Life Insurance Co. - proceeds of life insurance policy on life of Robert P. Dunmond		903.02
Received from John Hancock Mutual Life Insurance Co. - proceeds of life insurance policy on life of Alfred Langstaff		1,267.69

Received from Bowen and Blinkoff - bond premium correction	$ 900.00	
Interest on savings account #50375-8 with Marine Midland Bank - Western, computed on the following dates:		
December 31, 1968	1,674.66	
December 31, 1970	6,803.84	
September 30, 1973	12,860.09	
Total Receipts		$152,946.86

DISBURSEMENTS

Bowen & Blinkoff - Trustees bond premium	$ 500.00
John Anderson - services rendered	60.00
John Anderson - services rendered	30.00
Lewis Bronstein	463.32
Bowen & Blinkoff - Insurance premiums	295.80
Bowen & Blinkoff - Insurance premiums	14.00
Bowen & Blinkoff - Insurance premiums	7.00
John W. Cowper Co., Inc.	693.98
James Anderson - replacement of payroll check	158.30
Marion Assenza - replacement of payroll check	59.55
Frank DeLine - replacement of payroll check	85.48
Frank DiPasquale - replacement of payroll check	144.94
Frank DiPasquale - replacement of payroll check	144.94
Robert Dunmond - replacement of payroll check	172.35
Paul George - replacement of payroll check	57.23
Albert Harvey - replacement of payroll check	137.19
Alfred Langstaff - replacement of payroll check	134.44
Alfred Langstaff - replacement of payroll check	134.44
James Lyons - replacement of payroll check	129.12
James Lyons - replacement of payroll check	129.12
David Meakin - replacement of payroll check	153.41
Richard Miazga - Replacement of payroll check	106.04
William Perry - Replacement of payroll check	137.91
William Perry - replacement of payroll check	141.54
Kuranskis Grocery - James E. McPhee payroll check	120.87
John Anderson	50.00
Manufacturers & Traders Trust Company	407.00
Peter L. Scott	301.60
A.E. Architectural Materials, Inc.	1,438.49
Painters District Council	69.06
Painters District Council	17.78
Construction Industry Employer's Association	1,399.46
Frank Battaglia	156.80

Joseph Battaglia	$	71.60
Kenneth Bitterman		50.40
Franklin Dauman		11.20
Frank DiPasquale		124.30
Edwin Feverstein		168.00
Edmund Hill		157.50
Alfred Langstaff		179.20
Arthur McManus		84.00
Raymond McManus		179.20
James McPhee		61.60
John Monroe		95.20
William Perry		84.00
Walter Staebel		154.00
Edmund Mayer		140.00
Paul George		151.20
Frank DeLine		100.80
Albert Harvey		155.40
David Meakin		173.60
Philip Morganti		162.40
Peter Scott		168.00
Frank DeLine		82.60
Albert Harvey		100.10
David Meakin		96.60
Philip Morganti		108.50
Peter Scott		112.00
Wallace Kluge		8.00
Peter Sweltz		62.00
George Waldren		32.00
William Carruthers		25.00
William Lantz		42.00
Peter Sweltz		112.00
George Waldren		120.00
Ironworkers Apprentice Training Fund		18.00
Builders Trades Employer's Association of Central New York		18.05
Industry Fund of E.N.Y.C.E.		2.92
Sheet Metal Workers Local #71 & Industry Welfare Trust Fund		4.00
Construction Drivers Div. Local 449 Welfare Fund		38.10
Construction Industry Fund		58.44
Frank DeLine		59.94
Frank DiPasquale		35.49
Paul George		57.22
Alfred Langstaff		56.92
Raymond McManus		58.81
James McPhee		65.03
Richard Miazga		79.20
William Perry		61.92
Peter Scott		215.60
William Carruthers		21.07
William Lantz		21.07
Peter Sweltz		27.82
David Meakin		122.48
John Anderson		68.84

Manufacturers & Traders Trust Company - refund insurance premium	$ 64.75
Bowen & Blinkoff - Insurance premiums	661.00
Hal Godshaw - Insurance premiums	506.00
The Industrial Commission - Boiler inspection fee	10.00
Bowen & Blinkoff - Insurance premiums	150.00
George Reiser - appraisal fee	25.00
Edward A. Waters - appraisal fee	25.00
Lucy Hollbrook - typing appraisal	3.00
Erie County Commissioner of Finance	7,391.22
Adam R. Rumley, Tax Collector - Town of Tonawanda	4,650.39
Sneeringer & Rowley	1,200.00
Bowen & Blinkoff - Insurance premiums	731.00
Hal Godshaw - Fire insurance premium	506.00
Industrial Commissioner State of New York Boiler inspection fee	10.00
Adam R. Rumley, Tax Collector - Union Free School District #1	1,997.74
Goldstein, Navagh, et al.	15.80
Lewis Bronstein	818.90
Fiddler & Company - services rendered on audit	2,000.00
Adam R. Rumley, Receiver of Taxes (County Tax and Town Tax)	2,844.23
Bowen & Blinkoff - Insurance premiums	97.00
Bowen & Blinkoff - Trustee bond	200.00
Bowen & Blinkoff - Insurance premiums	155.00
Bowen & Blinkoff - Insurance premiums	200.00
Bowen & Blinkoff - Trustee's bond renewal premium	200.00
Lawley Service Inc. - renewal premium on Trustee's bond	200.00
Lawley Service Inc. - Bond premium	200.00
Total Disbursements	$ 37,926.51

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RECAPITULATION

Total Receipts	$152,946.86
Total Disbursements	37,926.51
Balance on hand	$115,020.35

Balance in savings account #50375-8 Marine Midland Bank - Western	$111,065.59
Balance in checking account Marine Midland Bank - Western	3,954.76
Balance on hand	$115,020.35

Dated: November 5th, 1973

/s/ Louis Sternberg

Louis Sternberg, Trustee

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

LOUIS STERNBERG, Trustee herein, does make solemn oath that the statements of fact contained in the foregoing report are true according to the best of my knowledge, information and belief; that the account is true and contains entries of every sum of money received by me and that the payments in such account stated to have been made by me have been so made.

/s/ Louis Sternberg
Louis Sternberg, Trustee

Sworn to before me this
5th day of November, 1973

/s/ William E. Lawson
Notary Public
Erie County, New York

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In the Matter

of

ALBERT W. DUMMOND INC.

Bankrupt

PETITION FOR ALLOWANCE OF ATTORNEYS FEES

BK-66-1499

PETITION AND REPORT OF LEGAL SERVICES

TO: HON. BERYL E. McQUIRE, Bankruptcy Judge

The petition of KAVINOKY, COOK, HEPP, SANDLER, GARDNER & WISBAUM, attorneys for the estate of John Swerdloff, respectfully shows the Court as follows:

1. John Swerdloff was a licensed attorney and counselor at law duly admitted to and practicing in this Federal Court at the time of the proceedings herein with an office at 2500 Rand Building, Buffalo, New York. During the period of March to July, 1966, he served as counsel to the petitioning creditors herein. He was appointed counsel for Louis Sternberg, Trustee of the bankrupt herein, and confirming papers and orders of appointment to such effect were entered in this Court on or about August 31, 1966. He served in such capacity until his untimely death on November 14, 1966, after a short illness. This estate is now ready to be closed and your petitioner, on behalf of the estate of the said John Swerdloff, submits herewith this report of and request for compensation for legal services rendered herein by the said John Swerdloff. Said legal services herein of the said John Swerdloff were rendered on behalf of the petitioning creditors herein and pursuant to his appointment by this Court as counsel for the Trustee in bankruptcy.

2. At the time the petition in bankruptcy was filed on or about July 6, 1966, the bankrupt was engaged in the window installation and construction business for many years and was actively engaged in window installations on new construction work for large public and commercial buildings in New York and several other states. The bankrupt had encountered increasingly slow and bad receivables for large jobs over recent years and began to experience such financial difficulties as meeting payrolls, paying creditors and covering overdrafts. As this situation became more and more critical, the bankrupt had accrued a large unsecured indebtedness to the Manufacturers & Traders Trust Company. Bank pressure to pay this indebtedness led the bankrupt to convey a large mortgage to the Manufacturers & Traders Trust Company on the bankrupt's valuable real property and buildings located in the Town of Tonawanda. This mortgage was conveyed within four months of the filing of the petition in bankruptcy and was in consideration for an antecedent indebtedness believed to be in excess of $100,000.00.

3. In light of the above circumstances, it was apparent that the creation of any significant estate was highly questionable and was contingent upon a number of very difficult variables. This situation led the Trustee to petition this Court for the appointment of John Swerdloff as counsel to the Trustee. His highly qualified legal services were sought for the following reasons:

a) The bankruptcy schedule showed substantial accounts receivable, and it was necessary to file both public improvement and private notices of liens.

b) It appeared from conversations with the President of the bankrupt that many of the accounts receivable were disputed

and litigation might be necessary to collect a substantial number of these accounts.

c) It was necessary to inquire into the validity of leases owned by the bankrupt.

d) It was necessary to conduct an examination into the affairs of the bankrupt.

e) Since the bankrupt had executed a mortgage for an antecedent debt, it was necessary to inquire into the nature of this transaction, and if necessary, bring proceedings to declare the transfer void.

f) There were various indebtednesses between the bankrupt, a subsidiary corporation and a sister corporation, having substantially the same stockholders, and the validity of these debts had to be fully investigated and resolved.

4. During the above-described period of time in which he served as counsel to the petitioning creditors herein, and from the time of his appointment as counsel to the Trustee in August, 1966, until his unfortunate death in November, 1966, John Swerdloff put in many long hours of legal service for both the petitioning creditors and the Trustee relative to the above-described matters. He prepared and filed the petitioning papers on behalf of the petitioning creditors herein, and paid a filing fee of $50.00 to the Clerk of the United States District Court. He further paid the sum of $10.16 to the Marshall's office for service of papers and supoena on the officers of the bankrupt. Xerox copies of the receipts for these disbursements are annexed hereto as Exhibits "A" and "B". In these early and rather critical days of this bankruptcy proceeding, his investigative and legal services laid the groundwork for much of the subsequent efforts

by co-counsel herein that resulted in the ultimate creation of a viable estate for creditors to satisfy their claims. During the period of his service as counsel to the petitioning creditors and the Trustee, he put in many long hours assembling and ascertaining the whereabouts of papers, contracts, tax returns, financial statements and other corporate records of the bankrupt. He coordinated and attended the initial meetings of creditors during this time. By the time of his death, all of the debtors of the bankrupt had been contacted and many receivables had been collected in a sum in excess of $17,000.00. He assisted in the supervision and coordination of the public auction in which the office equipment and personalty of the bankrupt was sold. He assisted the Trustee in obtaining possession of the real property of the bankrupt and in the collection of rents. Eventually the estate collected in excess of $62,000.00 in such rentals. Most significantly, John Swerdloff performed the long hours of investigative services necessary to discover the preferential transfer effected by the bankrupt in favor of the Manufacturers & Traders Trust Company. Such preferential transfer not only formed the basis for the involuntary petition that initiated the instant proceedings, but also led to subsequent litigation to set aside said transfer. This litigation was resolved by stipulation wherein the bankrupt was paid $25,000.00 less one-quarter's school taxes and was allowed to retain all rents previously collected. The rents and cash payment totaled $86,833.35. In addition, the Manufacturers & Traders Trust Company waived all right to claim or further participate in the bankruptcy, thus waiving $40,000.00 to $50,000.00 of other principal claims on its claimed mortgage in excess of $124,000.00. The amount realized and the claim waiver noted a 100 percent recovery on the real property for the bankrupt.

5. John Swerdloff has received no payment on account of the above-described services rendered during the period of his service as counsel to the petitioning creditors and the Trustee. Although others served for longer periods of time, his long hours of diligent and dedicated service during the period before his untimely and unfortunate death laid the groundwork for the creation of a viable estate out of which creditors of the bankrupt could satisfy their claims. It was only his untimely death that prevented him from finishing the job that he had so diligently and competently begun and progressed.

6. In view of the above considerations and the highly successful results ultimately achieved, your petitioner, on behalf of the estate of John Swerdloff, respectfully urges that the fair and reasonable value of the services rendered by John Swerdloff is $18,000.00. This compares with gross assets received in the estate of more than $152,000.00 as a result of his diligent and early efforts.

WHEREFORE, your petitioner respectfully prays that a hearing on this application be held on notice to the creditors and such others as are entitled thereto, at the conclusion of which the estate of John Swerdloff be allowed the sum of $18,000.00 as counsel fees for services rendered herein, the sum of $60.16 for disbursements and such other and further relief as may be just and proper.

Affirmed pursuant to the Federal Rules of Procedure as an Attorney on July 11, 1974.

S/ Edward H Kavinoky
Edward H. Kavinoky, Attorney

KAVINOKY, COOK, HEPP, SANDLER, GARDNER & WISBAUM
Attorneys for the Estate of John Swerdloff
Office & Post Office Address
120 Delaware Avenue
Buffalo, New York 14202
Tel. No. (716) 856-9234

Sworn to before me this

11th day of July, 1974.

S/ Russell J Pieri

Affidavit - 62 d Bankruptcy Act

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

EDWARD H. KAVINOKY, being duly sworn, deposes and says that he is a partner in KAVINOKY, COOK, HEPP, SANDLER, GARDNER & WISBAUM, attorneys for the estate of John Swerdloff, original attorney for the Trustee in Bankruptcy in The Matter of Albert W. Dummond Inc., BK-66-1499.

Your deponent has no knowledge of any agreement or understanding made by the said John Swerdloff or his estate with any person having to do with the division of his compensation or fees, and has no knowledge that the said John Swerdloff made any such agreement in any form or guise or that the said John Swerdloff agreed to share his compensation or fees or that he ever intended to do so.

S/ Edward H Kavinoky

Subscribed and sworn to
before me this 11th day
of July, 1974.

S/ Russell J Pieri

B.O.F. 25-6

UNITED STATES DISTRICT COURT

for the WESTERN District of NEW YORK

In re

ALBERT W. DUMMOND, INC.
2801 Kenmore Avenue
Kenmore, N. Y.

Bankruptcy No BK-66-1499

Bankrupt*

ORDER FOR FINAL MEETING OF CREDITORS AND NOTICE OF FILING OF FINAL ACCOUNT[S] OF TRUSTEE [AND RECEIVER] AND OF FINAL MEETING OF CREDITORS [AND OF HEARING ON ABANDONMENT OF PROPERTY BY THE TRUSTEE]

To the creditors:

The final report[s] and account[s] of the trustee [if appropriate: and of the receiver] in this case having been filed,

It is ordered, and notice is hereby given, that the final meeting of creditors will be held at Room 308, Bankruptcy Court, United States Courthouse, Buffalo, New York, on April 16, 1975, at 10 o'clock a.m., for the purpose [as appropriate] of examining and passing on the report[s] and account[s], acting on applications for allowances, and transacting such other business as may properly come before the meeting. Attendance by creditors is welcomed but not required.

The following applications for allowances have been filed:

Applicants	Commissions or Fees	Expenses
Receiver	$	$
LOUIS STERNBERG, Trustee	$ 1,994.47	$ 50.00
Attorney for Bankrupt	$	$
L. ROBERT LEISNER, Co-Attorney for Trustee	$ 18,500.00	$ 317.35
GOLDSTEIN, NAVAGH & BULAN, Co-Attorney for Trustee	$ 8,600.00	$ 45.50
KAVINOKY, COOK, HEPP, SANDLER, GARDNER & WISBAUM - Attys. for Estate of JOHN SVERDLOFF, deceased, Atty. for Trustee.	$ 18,000.00	$ 60.16
	$	$

Creditors may be heard before the allowances are determined.

The account of the trustee shows total receipts of $154,196.34, and total disbursements of $38,126.51. The balance on hand is $ 116,069.83.

In addition to expenses of administration as may be allowed by the court, liens and priority claims totaling $40,253.84, must be paid in advance of any dividend to general creditors.

Claims of general creditors totaling $194,655.05 have been allowed.

[If appropriate] The trustee's application to abandon the following property will be heard and acted upon at the meeting:

BANKRUPT DID NOT APPLY FOR DISCHARGE.

Dated: April 4, 1975

Office - 312 U. S. Courthouse
Buffalo, N. Y. 14202

BERYL E. MC GUIRE
Bankruptcy Judge

*Include all names used by bankrupt within last 6 years.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

ALBERT W. DUMMOND, INC. BK NO. 66-1499

Bankrupt

HON. JOHN T. CURTIN, CHIEF JUDGE

This order is submitted to you under Rule 4 of Rules of the United States District Court for the Western District of New York, for approval of the following allowances:

LOUIS STERNBERG, Trustee	$1,956.96
L. ROBERT LEISNER, Co-Attorney for Trustee	5,500.00
GOLDSTEIN, NAVAGH & BULAN, Co-Attorneys for Trustee	5,500.00
KAVINOKY, COOK, HEPP, SANDLER, GARDNER & WISBAUM, Attorneys for Estate of JOHN SWERDLOFF, deceased, as:	
Attorney for Trustee	1,500.00
Attorney for Petitioning Creditors	1,500.00

Approved
October 7, 1975
John T. Curtin
U.S.D.J.

Dated: ~~September~~ October 3, 1975

/S/ BERYL E. MC GUIRE
Bankruptcy Judge

No. 66-1499

RECEIPTS	$154,196.34

DISTRIBUTION

Expenses of Administration	$ 45,649.40
Priority Payments - Wages	12,101.73
" " - Taxes	40,303.85
Secured Payments	1,358.75
Unsecured Claims - approx. 28% dividend	54,702.61
	$154,196.34

EXPENSES OF ADMINISTRATION

Salary & Expense Fund	$ 3,333.93
Other charges	141.35
Reporting	55.00
Accountant	2,000.00
Auctioneer	1,282.22
Appraisal expense	53.00
Trustee's allowance	1,956.96
" disbursements	50.00
Co-Atty. for Trustee's allowance	5,500.00
(L. Robert Leisner) disbursements	317.35
Co-Attys. for Trustee's allowance	5,500.00
(Goldstein, Navagh, et al) disb.	61.30
Atty. for Petitioning Creditors - Allowance	1,500.00
Disbursements	60.16
Atty. for Trustee's allowance (John Swerdloff)	1,500.00
Taxes on real estate	16,883.58
Bond premium	2,700.00
Insurance	2,594.55
Services	140.00
Boiler inspection fees	20.00
	$45,649.40

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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IN THE MATTER

OF

ALBERT W. DUMMOND, INC.

BK NO. 66-1499

Bankrupt

Undoubtedly one of this Court's crowning supervisory failures insofar as prompt and expeditious bankruptcy administration is concerned, this case finally has reached the stage where the Court must consider fee applications by the trustee, by the estate of the deceased attorney who initially represented petitioning creditors and who for a brief subsequent period represented the trustee, and by co-attorneys who thereafter represented the trustee.

Unlike wine, bankruptcy cases rarely improve with age. Not only may distribution be delayed but administrative costs (preparation of tax returns, etc.) continue to accrue. The presence of co-attorneys--through the division of or confusion in responsibility--often detracts from rather than enhances administration. Changes in bankruptcy personnel may further complicate a case due to varying attitudes as to forms of accounting and degrees of accountability--which, when involving higher standards, cannot be met due to failed memories or even the death of principals.

The total estate here approximated $155,000 00 of which amount $62,000.00 was generated from rents collected, $24,000.00 from the settlement of a hotly disputed preference claim, $35,000.00 from collection of accounts receivable and approximately $21,000.00 from accrued interest on the aforementioned sums. There presently remains available for distribution before payment of remaining administrative costs a total of $116,000.00.

Fee setting in this case, in part, is complicated by the fact that many of the principal aspects of the case were handled before a prior Referee and that the estate for the deceased attorney possesses no time records. While time accountability may not have been stressed by the Court at the times in question, at this late date this Court will not speculate as to whether they would or would not have been available but for counsel's untimely death.

The Court, however, is limited in large part to a review of the records and of the present applications without the benefit of personal involvement in major aspects of the case.

The fee allowances are fixed as follows:

	Statutory Commissions
Louis Sternberg, Trustee	
L. Robert Leisner, Co-attorney for the Trustee	$5,500.00
Goldstein, Navagh & Bulan, Co-attorney for the Trustee	$5,500.00
Estate of John Swerdloff, As Attorney for Petitioning Creditors	$1,500.00
As Attorney for the Trustee	$1,500.00

With reference to the allowance of the estate of John Swerdloff, the Court additionally would note that the decedent's appointment as attorney for the trustee occurred on August 31. 1966. Following what is described as a short illness, he died on November 14, 1966.

As to counsel's fees, it should be noted that reading routine correspondence, collecting rent and other routine matters of administration should not require an attorney's attention. Moreover, the reasonable value of those services obviously requiring an attorney's attention has been gauged not in light of current reasonable charges but in light of reasonable charges prevailing at the times in question.

Dated: October 3, 1975

Bankruptcy Judge

L. ROBERT LEISNER
ATTORNEY AT LAW
L. ROBERT LEISNER
1 ARUNDEL ROAD
BUFFALO, N.Y.
14216

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Oct. 20, 1975

Hon. John T. Curtin, Chief Judge
U. S. District Court
W.D.N.Y.

Re: Albert W. Dummond Inc.
BK 66-1499

Dear Judge Curtin:

At your direction today, I have informed the Bankruptcy Court that not having received a copy of the order when submitted to you, I have been allowed a hearing on the recommended order of the Bankruptcy Court with respect to the allowance of Counsel fees for my work.

Since I am in Albany, the hearing to be put on seasonably for a Monday on filing exceptions beforehand with your Court.

A copy of this letter is delivered to the Bankruptcy Court today so that the files will reflect the foregoing arrangements before I leave Buffalo for circuit hearings.

Respectfully,

L. Robert Leisner

L. Robert Leisner

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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In the Matter

of

ALBERT W. DUMMOND, INC.,

Bankrupt.

MOTION FOR RECONSIDERATION OF COUNSEL FEES

No. BK 66-1499

TO THE HONORABLE JOHN T. CURTIN, CHIEF JUDGE

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.

L. ROBERT LEISNER, the applicant, being duly sworn herein, respectfully shows the Court:

(1) An order respecting the allowance of counsel fees dated October 3, 1975 was forwarded to this Court for approval without notice to the applicant by the Bankruptcy Court with an accompanying memorandum. Thereafter, on approval of this Court (dated October 7, 1975), it was mailed to the applicant on October 20, 1975. On October 20, 1975, the Hon. John T. Curtin, informed that no notice of the submitted order had been given to the applicant, directed that the applicant herein be given a hearing thereon.

(2) The applicant having examined the October 3, 1975 order of the Bankruptcy Court and its memorandum, the applicant respectfully requests this Court, upon this application, upon hearing this matter, to re-examine the applicant's petition for allowance of attorney fees dated April 26, 1974 and supplement thereto dated May 2, 1975 and thereupon to re-determine the petitioner's counsel fees as originally requested.

(3) In support of this request, the applicant respectfully brings to the attention of this Court the following facts.

(4) This bankrupt estate predates the present referee in bankruptcy. Not only has the first referee in bankruptcy been succeeded, but also John Swerdloff, the first attorney for the trustee, died early in the bankruptcy and Judge Henderson has also passed on. The present referee was not involved in major aspects of the case and he has no personal knowledge of major aspects of the case. Not only was he not in office in the beginning of the case, but also he was shielded and left uninvolved in the lengthy and complicated discussions between and among creditors and their attorneys because of the circumstance that he would have had to act as trial judge on the greatest portion of the case involving over two-thirds of all assets received.

(5) It is of the utmost importance that no attorney, no co-counsel and none of the principals having any personal knowledge opposed petitioner's application.

(6) It is also very important to note that at the final meeting of creditors that no creditor opposed petitioner's application.

(7) Limited in large part to a review of the records, the Bankruptcy Court memorandum clearly demonstrates that the Bankruptcy Court is in major error over the greatest part of the estate.

(8) The memorandum of the Bankruptcy Court is in error about the M & T litigation.

(9) The memorandum of the Bankruptcy Court mistakenly reports that there was a $24,000.00 settlement of a hotly-disputed preference claim.

(10) The memorandum's omission of most important factors that must by law be considered in setting fees requires relief and corrective action. More than $86,000.00 of receipts was <u>totally</u> contingent upon the success of the M & T preferential mortgage litigation. This $86,000.00 (plus) sum earned the greatest portion of the $21,338.59 interest realized by the bankrupt's estate.

(11) In paragraph 11 of the Amended Answer of the M & T dated March 18, 1968, the M & T (a) claimed all of the rentals, (b) asserted that the rentals were secured by the mortgage, and (c) demanded an accounting for all of the rentals.

(12) The $86,333.35 of receipts involving the contested real property was obtained through the case payment, and the claimed rentals. Additionally, there was a giving up of a $40,000.00 to $50,000.00 general creditor claim by the M & T. This $40,000 to $50,000 claim was a very large fraction of the general creditor claim and eliminating it was no small achievement. Indeed, records of the Erie County Clerk's Office dated September 1, 1970 show a deficiency to the M & T of over $50,000.00 (See attached Exhibit "A").

(13) This settlement was contingent upon the success of the attorney's work and though complicated and involved, the bankruptcy file and more particularly deponent's application clearly reflect the magnitude of the resultant settlement and the work done to achieve it.

(14) The above items and interest considerations thereon were the subject of involved negotiations and correspondence.

(15) The M & T settlement of $86,333.35 (rents and cash), together with interest of $21,338.59 earned largely on the settlement funds, totalled over $108,000.00 receipts and with an added waiver of a $40,000.00 to $50,000.00 general creditor claim, clearly demonstrate that the bankrupt estate benefitted well in excess of a $150,000.00 settlement.

(16) Work items appearing on sheets attached to the petitioner's original fee application involved, almost without exception, legal matters or matters requiring legal counseling. The Bankruptcy Court memorandum appears to be under the mistaken impression that a substantial portion of my services were connected with: (a) routine correspondence, (b) collecting rent and

(c) other routine matters of administration. Routine correspondence of the bankrupt and its subsidiary corporations was handled by a secretary and only the matters requiring a lawyer's attention were referred to a lawyer. Routine matters of the administration of the property were also handled by the trustee and only those requiring adjustments, negotiations and court orders were referred to the lawyers.

(17) Petitioner maintained all of the direct litigation file on the M & T preferential transfer at his office. Petitioner carried the bulk of the work on the litigation of the preferential transfer while insolvent having a considerable background over many years as a lawyer in net worth litigation. O'Connor v. Comm.; Kendzie v. Comm.; Casciani v. Comm.; Casciani v. U. S. [All this is detailed in petitioner's original application (paragraph 14)]. Securities Exchange Commission v. Irving.

(18) Factors essential to the setting aside of the preferential mortgage transfer involved showing that the M & T was a general creditor of the bankrupt, that the mortgage was given to secure an antecedent indebtedness, that the bankrupt was insolvent at the time of the mortgage and transfer to the M & T, that the M & T had reasonable cause to believe that the bankrupt was insolvent at the time of the transfer, and that the actual effect was to give the M & T a greater percentage of its debt than creditors of the same class.

(19) Respecting "routine" correspondence and "routine" matters of administration, it must be recognized that to maintain the integrity of the records and the bankrupt's position in the face of a hotly-contested litigation on the solvency of the company in the face of the many inquiries from governmental tax, labor and other regulatory agencies and authorities and in

the face of the pending lawsuits on construction contracts across the state was an enormous task. The magnitude of this task may be grasped by a look at the March 12, 1968 notice of deposition requiring the production of financial statements, account books, records, correspondence, inventory, insurance records, tax returns, records of property, machinery, fixtures and equipment, depreciation records, records of subsidiary corporations, accounts payable records, records of reserves and deposits, records and correspondence of the trustee and counsel concerning the bankrupt's assets and liabilities, compromises of lawsuits, appraisal reports, or opinions of assets, transcripts of testimony (see notice of deposition March 12, 1968, pages 2, 3 and 4), memoranda, rough notes or writings of conferences, conversations (the notice requires much more).

(20) It cannot be ignored that the opposition in this case was one of the largest banks in Western New York and one of the largest law firms in the City of Buffalo. The petitioner alone or with co-counsel, whether in conference or in court, was always faced with a senior partner, usually William H. Gardner, accompanied by another member of the firm, and there was always a bank official in their company. To ignore the realities of this situation when faced with one of the largest law firms and one of the leading banks, and to ignore the huge attack to be made on the records and correspondence taking place would be to jeopardize the entire preference litigation and virtually the entire bankruptcy estate. To fail to keep the integrity of the files, to fail to keep and safeguard the bankrupt's papers, correspondence and records and its position as reflected on the work then being done and carried forward would have lost the greatest portion of the estate

herein. The type of records and papers sought by the M & T demonstrates this fact beyond question.

(21) The court action in the New York State Courts, the notices, the eviction and dispossess action, the trial, the settlement during trial resulting in the breaking of the lease provisions by avoidance of the option for renewal and the avoidance of the purchase option were all accomplished in the State Courts and definitely required an attorney's services and cannot be overlooked.

(22) This phase of the work was most important because it was necessary to maintain possession, keep the properties occupied and rented and obtain the $62,378.43 of disputed rentals which ultimately figured in the M & T settlement of $86,333.35.

(23) The Bankruptcy Court's note about routine rental collections is flatly in error. By early arrangement, all routine rental collections constituting West End Brewing Co. rentals (a major portion of rentals) were sent directly to the trustee by the tenant without incident and without attorney services.

(24) The Coder rentals were specifically turned over by the trustee to the attorney for collection even prior to petitioner's appointment. The attorney's services on Coder collections were required by the trustee.

(25) Even in the Bankruptcy Court itself, the tangled expenses, property taxes, assessments, utilities and insurance bills were the subject of many adjustments, indemnification agreements and court appearances. In Bankruptcy Court itself, these matters were the subject of Bankruptcy Court orders on a number of occasions with stipulations between

the bankrupt and the M & T's lawyers and definitely required a lawyer's services.

(26) The court action in the Bankruptcy Court itself to avoid the leases and the purchase options cannot be overlooked or ignored.

(27) The court action in the New York State Courts required prior research, permission and an enabling order from the Bankruptcy Court itself.

(28) The applicant, without limiting himself to the following, more particularly requests the Court to take judicial notice of the following:

(a) order to show cause February 21, 1968 to set aside mortgage

(b) answer to petition to set aside mortgage March 12, 1968

(c) M & T claim of all rentals, secured by mortgage and demand for accounting March 18, 1968

(d) show cause order for payment of property taxes March 18, 1968

(e) order and indemnification agreement March 25, 1968

(f) order vacating appointment of auctioneer April 4, 1968

(g) petition to commence action in State Courts May 9, 1968

(h) notice and petition in State Courts June 8, 1968

(i) lease rider executed June 24, 1968

(j) stipulation of dismissal State Court June , 1968

(k) notice of deposition August 12, 1969

(l) stipulation of settlement September 9, 1969

(m) order stipulation approved October, 1969

(29) During the years 1966 to 1970, petitioner leased an office and maintained a law office at 2500 Rand Building or 806 Rand Building at considerable expense.

(30) The proposed allowance of counsel fees and memorandum reflect no awareness of law office overhead. The allowance would not cover overhead for the work attributable to this case.

(31) Tax work is mentioned in the memorandum as a burden on this bankruptcy.

(32) To receive disputed rentals of $62,378.43 and interest of $21,338.59, or a total (of rents and interest) of $84,717.02 without tax liability, to retain, research and marshall the records, set up the proper tax structure, to obtain and undergo the early audit and to receive a final report of no change and of no tax on the $84,717.02 of rent and interest receipts required an enormous amount of tax work and expertise. Petitioner served as a trial lawyer for the Chief Counsel's Office I.R.S. in the 1950's and as attorney for many taxpayers, e.g., Bauer v. Foley, (2nd Cir.) and served as a special tax counsel many times.

(33) The Bankruptcy Court memorandum fails to recognize that the tax work involved was lengthy, intensive and complicated. Certainly, the expertise of a tax lawyer's work for a report of no tax on receipts of $84,000.00 was worthwhile.

(34) The memorandum mentions the age of the case.

(35) Any delay notwithstanding it should be noted that the applicant sought and obtained an early audit in order to close the estate in 1970. He sought to close the estate again in 1972. He offered to the co-counsel to go to New York City for examinations before trial and for trial preferences in 1972. On a number of other occasions, he sought to close the estate. (See attached Exhibits "B" and "C"). The applicant

came to Buffalo from Albany a number of times to do anything to close the estate. Subsequent to the filing of the application for attorney's fees, the applicant on different occasions spent several half-days with the court staff itself reconciling records of court orders which could not be interpreted due to changes in bankruptcy personnel and methods of record keeping.

(36) The petitioner also did additional tax work and other work for the bankrupt at the final meeting of creditors some of which is mentioned in his supplemental report, and the time spent on behalf of the bankrupt now exceeds 320 hours.

(37) Your petitioner has practiced law for over twenty years in Federal Courts in Ohio, Washington, D. C. and New York and particularly in the trial and appellate courts, State and Federal, located in New York State, has done successful work as counsel in major capital cases and has done a considerable amount of practice in the tax and financial fields.

(38) The Bankruptcy Court's fee allowance to petitioner is neither adequate compensation for the petitioner's services as an attorney, nor is it realistic in terms of law practice, overhead and taxes, nor does it take into account essential standards such as the work done, the results accomplished.

(39) The memorandum indicating lack of personal involvement and demonstrating major error concerning the greater part of the estate and the legal services rendered finally fails to indicate any standard by which fees were measured but erroneously states that value was gauged in the light of reasonable charges prevailing at the times in question. The fairness in using a 1966 gauge, considering the steady inflation, aside, the memorandum leaves the applicant or anyone to wonder what standards were used to determine prevailing charges in any event.

The memorandum simply does not observe or comply with the normal standards for fixing fees.

(40) The standards to fix fees were normal then as now. (1) the amount of work done, (2) the nature, the difficulty and the complexity of the work and the litigation, (3) the responsibility imposed, (4) the standing of the attorney, (5) expertise in special fields of law in tax and financial litigation, (6) the caliber of the opposition, (7) the amounts involved in the work, (8) the results achieved and the benefits obtained, (9) whether this work precluded other employment, (10) the amount of the fee to office overhead and taxes, (11) the necessity of adequate compensation to an attorney, (12) much weight to the fact that both the fee and the creation of any estate was largely contingent on the services of the attorney and considerable weight to the fact that the request for fees was uncontroverted, (13) and the Court's own knowledge of the competence of the attorney.

WHEREFORE, your petitioner requests this Court to apply the above standards normally used to determine an attorney's fee; your petitioner further requests the Court to fully examine his original petition and report of legal services and supplement and after the conclusion of the scheduled hearing thereon, your petitioner requests the Court to fully reconsider the matter; your petitioner further requests that he be allowed the sum of $18,500.00 as counsel fees for services rendered herein, and that he be reimbursed for disbursements of $317.35; and your petitioner further requests such other and further relief as may be just and proper in the premises.

L. Robert Leisner

L. ROBERT LEISNER

Subscribed and sworn to before me
this 5th day of December, 1975.

Beatrice A. Adams

Notary Public - State of New York
My Commission Expires 3/30/76

[illegible] New York
[illegible] County
Commission Expires March 30, 1976

State of New York.

SUPREME Court, County of ERIE

MANUFACTURERS AND TRADERS TRUST COMPANY *Plaintiff*

against

Index No. D-35659

ALBERT W. DUMMOND, INC., et al., *Defendant*

To the SUPREME Court:

IN PURSUANCE, and by virtue of a Judgment of this Court, made in above entitled action, on the 28th day of May in the year 19 70 and duly entered, by which it was, among other things, ordered and adjudged, that the mortgaged property specified in the complaint in this action, and hereinafter described, or such part thereof as is sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of the action, and which might be sold separately without material injury to the parties interested, be sold at public auction by the undersigned Referee, duly appointed for such purpose; that such sale be made in the County of Erie , N. Y., where the said mortgaged property, or the greater part thereof, is situated; that said Referee give public notice of the time and place of such sale, according to law and practice of this Court, and that the *plaintiff* or any of the parties to this action might become *purchaser* at such sale; that said Referee execute a deed to the *purchaser* of the mortgaged property sold at such sale, and that, out of the proceeds of such sale, the said Referee pay, † as part of the expenses of such sale, all taxes, assessments and water rates, which are liens on the property sold, etc., and also, after deducting the amount of his fees and residue of expenses of such sale, he pay to the ~~*Guardian ad litem of the infant defendant*~~ ~~*costs allowed by the Court in this action, and also pay to the said plaintiff*~~ or *his/its attorney* the sum of $ 319.00 for *his/its* costs and disbursements in this action as taxed, with interest thereon from date of said judgment, and further pay the amount of said debt reported due to said *plaintiff* with interest thereon from the date of the Referee's report, or so much thereof as said proceeds of sale would pay of the same; and also that said Referee bring the surplus money arising from such sale, if any there should be, into Court by paying the same to the Manufacturers and Traders Trust Company subject to further order of the Court; and also that said Referee within thirty days after completing said sale and executing the proper conveyance to the purchaser file with the clerk of said county his report under oath showing the disposition of the proceeds of such sale accompanied by the proper vouchers and receipts of the persons to whom payments were ordered to be made for the several amounts so paid by him as above specified, and whereby it was further ordered and adjudged that if the proceeds of such sale should be insufficient to pay the amount reported due to the *plaintiff* with the interest, expenses, taxes and costs aforesaid, that the said Referee specify the amount of such deficiency in his report of the sale; I, the undersigned Eugene M. Gaughan Referee as aforesaid, residing in Buffalo , N. Y., do respectfully certify and report such sale and proceedings as follows: that having been charged by the *attorney* for the *plaintiff* with the execution of said judgment, I advertised said mortgaged property to be sold by me at public auction, at the Foreclosure Alcove, First Floor, Erie County Hall, Buffalo in County of Erie , N. Y. on the 21st day of July in the year 19 70 ; that previous to such sale I caused notice to be publicly advertised for four weeks successively, as follows, viz.: by causing a printed notice thereof to be fastened in three public conspicuous places in the City of Buffalo where said property was to be sold, and also in three public places in the Town of Tonawanda, N. Y. where the said property is situated, at least twenty-eight days before the sale, and also by causing a copy of such notice to be published once in each week during the four weeks immediately preceding such sale, in a public newspaper published in said County of Erie , N. Y., to wit: in the Buffalo Daily Law Journal published at Buffalo in said County, which notice contained the same description of said mortgaged premises as did said judgment.

AND I DO FURTHER REPORT that on the said 21st day of July in the year 19 70 , the day on which the said property was so advertised to be sold as aforesaid, I personally attended at the time and place fixed for such sale, and exposed said property for sale at public auction to the highest bidder, and the said property was then and there fairly struck off to H S H Holding Corp. for the sum of One Hundred Two Thousand Five Hundred -------- Dollars ($ 102,500.00) it *he* being the highest *bidder* therefor and that being the highest *sum bidden* for the same, which corporation subsequently assigned its bid, copy of assignment attached as Exhibit A.

AND I DO FURTHER CERTIFY AND REPORT that I have executed, acknowledged and delivered to said *purchaser* S* the usual Referee's Deed of said property, and have paid over or disposed of the proceeds of sale as follows, viz.: I have paid for County Taxes, $ None Due , and for ---------- Taxes and Assessments, $ none due , and for Water Rates, $ none due , which said taxes,

*Laverne Doran, Miriam Doran, Suzanne M. Schaff and Lenore H. Rubin, named in said assignment

EXHIBIT H

Ex "A-1"

assessments and water rates were liens on said property, and I have deducted and retained the sum of $ ~~100.00~~ 316.53 for the amount of my fees and residue of expenses of said sale, ~~including costs for publishing and posting notices of said sale, etc., and I have paid the disbursements and items of costs allowed~~ including costs indicated below 2t * ~~his costs allowed by the Court~~; and I have paid to the *attorneys* for said *plaintiff* the sum of THREE HUNDRED NINETEEN ~~Hundred~~ Dollars ($ 319.00) being the amount of its ~~his~~ costs and disbursements inserted in said judgment, ~~with interest thereon to date~~ adjusted, and I have also paid to said *attorneys* for *the plaintiff* the sum of One Hundred ~~Two~~ Thousand ~~One~~ Eight Hundred ~~Eighty three~~ Sixty-four 47/100 Dollars ($ ~~1064.47~~ 104,864.47) applied on said mortgage debt,* ~~and I have also paid to the~~

~~the sum of~~ ~~Dollars~~

~~($), surplus money, subject to the further order of the Court.~~

FURTHER I CERTIFY AND REPORT, that I have taken receipts for the several amounts paid by me as above specified, and which receipts are hereto annexed.

‡AND I HEREBY FURTHER CERTIFY AND REPORT that after said sale, and the disposal of the proceeds thereof as above stated the amount of deficiency is Fifty-One Thousand Eight Hundred seventy-six 93/100 Dollars ($ 51,876.93), for which the *defendant* Albert W. Dummond, Inc., is liable under said Judgment.

Stipulated correct M Landau

AND I DO FURTHER CERTIFY AND REPORT that the premises so sold and conveyed as aforesaid were described in said Judgment, and in the said deed so executed by me, as follows, viz.:

All that Tract or Parcel of Land, situate in the Town of Tonawanda in the county of Erie and State of New York, and being part of Lot No. 43, Township 12, Range 8 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the point of intersection of the south line of Sawyer Avenue with the east line of Kenmore Avenue; running thence southerly along the east line of Kenmore Avenue, 577.65 feet to the north line of Parkedge Avenue; running thence easterly along the north line of Parkedge Avenue, 23.80 feet to the northwesterly line of lands appropriated by the People of the State of New York for the New York State Thruway by Notices of Appropriation recorded in the Erie County Clerk's Office in Liber 6015 of Deeds, page 133, Liber 6007 of Deeds, page 459, Liber 6015 of Deeds, page 598 and Liber 6007 of Deeds, page 158; running thence northeasterly along said northwesterly line of lands so appropriated, 593.60 feet to the intersection of said northwesterly line of lands so appropriated with the south line of Sawyer Avenue; running thence westerly along the south line of Sawyer Avenue, 165.93 feet to the point of beginning.

* I further report that my fees and the expenses incurred herein are detailed as follows: My fees $100.00; Buffalo Daily Law Journal, Inc. for payment of publication bill (net basis) $103.78 and Erie County Clerk for payment of New York State Transfer Tax on delivery of deed $112.75, totalling $316.53.

"SCHEDULE A," hereto annexed is a summary account of the proceeds of said sale, and shows the resulting balance as above stated; and which Schedule is presented as part of this Report.

All of which is respectfully submitted to the Court. Dated September 1, 1970

Eugene M. Gaughan

Eugene M. Gaughan, *Referee*

* Erase in case of deficiency. ‡ Erase in case of surplus.

Ex. "A-2"

County of ERIE } ss. 100

of

EUGENE M. GAUGHAN, being duly sworn deposes and says that he is the Referee above named; that the foregoing report by him subscribed is true to his own knowledge.

Sworn to before me this 1st day of September, 1970

Eugene M. Gaughan
Eugene M. Gaughan

WILLIAM H. GARDNER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1971

William H. Gardner
Notary Public

Schedule A

Referee obtained from sale, on 31st day of August, 1970, $102,500.00

Amount of tax liens paid by Referee,	$ -0-	
" " Referee's fees and disbursements	316.53	
" " Costs allowed guardian *ad litem*	-0-	
" " " " plaintiff in judgment ~~and interest~~	319.00	
" " Mortgage debt for plaintiff in judgment ~~and interest~~	153,741.40	
		154,376.93
Amount needed on sale		
Amount of ~~surplus (or)~~ deficiency	$	51,876.93

Stipulated correct W H Gardner

Dated September 1, 1970

Eugene M. Gaughan
Referee.

Court

~~Plaintiff~~
~~against~~
~~Defendant~~

Receipt for Guardian ad litem's Costs.

Received , 19 , from the Referee who made the sale of the mortgaged property under and by virtue of the Judgment in the above entitled action, the sum of Dollars and Cents ($), costs allowed me as guardian *ad litem* in said Judgment.

Guardian ad litem.

SUPREME **Court**

MANUFACTURERS AND TRADERS TRUST COMPANY *Plaintiff*
against
ALBERT W. DUMMOND, INC., et al., *Defendant*

Receipt for Costs of Plaintiff.

Received September 1, 1970, from Eugene M. Gaughan the Referee who made the sale of the mortgaged property under and by virtue of the Judgment in the above entitled action, the sum of Three Hundred Nineteen ---------- Dollars and 00/100---------- Cents ($319.00), being the amount of the costs and disbursements of the *plaintiff* in said action, as taxed by the Court, with the interest, which costs are paid me by said Referee under and by virtue of the provisions of said Judgment. Interest waived.

William H. Gardner
Attorney for Plaintiff.

William H. Gardner
for HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR

Ex "A-3"

L. ROBERT LEISNER
ATTORNEY AT LAW
806 RAND BUILDING
LAFAYETTE SQUARE BUFFALO, N. Y. 14203
Telephone 852-2551

101

Mar. 20, 1970

RECEIVED
MAR 20 1970
U.S. Int. Rev.
Buffalo N.Y.

Returns Classifying Officer
U. S. Int. Rev. Service
Buffalo, N. Y.

Re: Albert W. Dummond Inc., Bankrupt, 1969 - 1120
" " " 1968 - 1120
" " " by Louis Sternberg, Trustee 1967
Form 1041

Gentlemen:

Pursuant to Section 6501 (d) of the Internal Revenue Code request is made for prompt audit of the above returns.

The bankrupt estate is coming to a close. We would appreciate it if you would act promptly on this requestbecause there are many small creditors who have lost much, and they are anxious to secure their liquidating dividend as soon as possible.

I am enclosing a carbon copy to this original. Would you acknowledge receipt of this letter on the carbon copy or by your own stationery.

Yours truly,

L. Robert Leisner

L. Robert Leisner
Attorney for the
Trustee In Bankruptcy
ALBERT W. DUMMOND, INC. BKPT.

RECEIVED
APR 10 1970
DIRECTOR
NORTH ATLANTIC SERVICE
CENTER
08 #1

Ex "B"

L. ROBERT LEISNER
ATTORNEY AT LAW
2500 RAND BUILDING
LAFAYETTE SQUARE BUFFALO 3, N. Y.
TELEPHONE 85-2-2551

Amended Rd 14216

DATE June 1, 1972

TO: Mr. Louis Sternberg Atty
Walbridge Bldg. Court St.
Buffalo NY

RE: Drummond Bkpt.

1) Tax Returns
2) closing file.

Dear Lou,

The 1971 Federal and State returns were filed in April 1972 for the bkpt. boy me.

I am in favor of closing this case and am extremely doubtful of the value of the Hark litigation & the delay in closing the bankruptcy

Yours truly,
Robert Leisner

Encl Letter of 12/1/70 in file status.

Ex "C-1"

LAW OFFICES OF
GOLDSTEIN, NAVAGH, IWANICKI & BULAN
10 LAFAYETTE SQUARE SUITE 1010
BUFFALO, NEW YORK 14203
AREA CODE 716 854-1332

DAVID J. GOLDSTEIN
GEORGE J. NAVAGH
DON B. IWANICKI
HAROLD P. BULAN
E. D. GOLDSTEIN

BATAVIA OFFICE
437 EAST MAIN ST.
BATAVIA, N. Y. 14020
716 343-4877

December 11, 1970

Hon. Beryl E. McGuire
Referee in Bankruptcy
714 U. S. Courthouse
Buffalo, New York 14202

Re: Albert W. Dummond, Inc.
BK-66-1499

Dear Sir:

In regard to your show cause order in the matter of Albert W. Dummond, Inc., please be advised that the only remaining activity in this matter is the prosecution of a civil lawsuit on behalf of the bankrupt against M. Stark Construction Corp. in the approximate amount of $9,000.00. Since the defendant and all or most of the necessary witnesses reside in the New York City area, I have requested permission from the Court to expend approximately $1,000.00 to pursue this lawsuit. This petition was filed with the Court on November 4, 1970 and I have been recently advised by you that permission has been granted.

It is anticipated that this lawsuit will not be closed for at least another year. Other than this lawsuit, however, there is no reason why this file cannot be closed.

Very truly yours,

GOLDSTEIN, NAVAGH, IWANICKI & BULAN

BY:
DBI:vgh

cc: Louis Sternberg
Aaron, Dautch, Sternberg & Lawson

Ex C-2

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

In the Matter

of

BK-66-1499

ALBERT W. DUMMOND, INC.,

Bankrupt

O R D E R

CURTIN, DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In the Matter

of

ALBERT W. DUMMOND, INC.,

Bankrupt

BK-66-1499

APPEARANCES: WILLIAM R. BRENNAN, ESQ., Buffalo, New York, of Counsel for L. Robert Leisner, co-counsel for Trustee.

L. ROBERT LEISNER, pro se.

On October 3, 1975, the court issued an order approving the recommendation of Bankruptcy Judge Beryl E. McGuire awarding fees to L. Robert Leisner, co-counsel for the Trustee, in the sum of $5500, to Goldstein, Navagh & Bulan, co-counsel for the Trustee, in the amount of $5500, and to the Estate of John Swerdloff, who was attorney for the Trustee for about five months, the sum of $3,000. On December 8, 1975, Mr. Leisner, with attorney William R. Brennan, moved for reconsideration of the court's order as it pertained to his fee. The motion lists a number of "facts" in support of his application.

On December 22, 1975, I considered oral argument from Mr. Brennan in support of the application. In his brief in support of the motion, Mr. Brennan characterized this bankruptcy proceeding as "long, difficult, time consuming and tangled . . .."

Perhaps the Bankruptcy Judge considered all of the factors listed in the motion which, the applicant urges, support his claim for a larger fee. On the other hand, perhaps some of these factors were not called to the Bankruptcy Judge's attention. So that this matter may be given careful and orderly consideration, it is remanded to the Bankruptcy Judge for further review and report. Petitioner may supply additional affidavits, documents or testimony before the Bankruptcy Judge.

So ordered.

JOHN T. CURTIN
United States District Judge

DATED: January 19, 1976

FILED

APR 14 1976

BERYL E. McGUIRE
BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT

* * * *

I N D E X

WITNESS:	PAGE NO.
L. Robert Leisner	20

EXHIBITS:	FOR IDEN.	IN EVD.
Petitioner's:		
1 & 2	24	57
3	48	57
4	55	57
5	58	58
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7	67	68
8	68	68

P R O C E E D I N G S

THE COURT: Gentlemen, this is a hearing scheduled pursuant to an order of the Honorable John P. Curtin, Federal Judge, dated January 19th, 1976, in the case of Albert W. Dummond. Would you note your appearances?

MR. BRENNAN: We have, Judge.

THE COURT: Fine. Mr. Brennan, you're appearing for Mr. Leisner; is that correct?

MR. BRENNAN: Yes.

THE COURT: Do you have any additional affidavits or documents?

MR. BRENNAN: I have. I hand up an affidavit...may it please the court...of Chester A. Pearlman, who has reviewed the Petition and supporting affidavit of Mr. Leisner...and I hand it up to the Court... in which Mr. Pearlman states his opinion that the request of Mr. Leisner is reasonable.

THE COURT: All right. And Mr. Pearlman was involved in the case in what fashion?

MR. BRENNAN: He was not involved in the case. That's an opinion based on experience

and it's, in effect, your Honor, an affidavit based on the accepting of the Petition of Mr. Leisner and his supporting affidavit.

THE COURT: Did Mr. Pearlman, to your knowledge, review the records in this?

MR. BRENNAN: Yes, I handed them to him.

THE COURT: How did you hand them to him when they are in the file here?

MR. BRENNAN: What I meant, your Honor, it's an affidavit based on the truth. I want that understood. It's based on the truth of Mr. Leisner's Petition.

THE COURT: He did not review the records in this Court?

MR. BRENNAN: I don't know, your Honor. He certainly reviewed Mr. Leisner's petition and he also reviewed Mr. Leisner's affidavit. I don't think there's any doubt about the fact it's an affidavit based on a hypothetical question.

THE COURT: He's assuming, I take it, that all the statements in Mr. Leisner's

Petition for fees were true?

MR. BRENNAN: True.

THE COURT: Was he aware there were three other attorneys claiming similar services? I think he's made the assumption there was a division of services and no duplication of effort, am I correct?

MR. BRENNAN: Mr. Pearlman, I know, has been talked to and has been interviewed by Mr. Leisner and I'm sure Mr. Pearlman knows the basic facts of the case.

MR. LEISNER: Yes. I explained to Mr. Pearlman there was an attorney who had served as co-counsel, first as a prior counsel, John Swerdlof, who had died and also there was a co-counsel, Mr. Goldstein.

THE COURT: How much was Mr. Swerdlof's application for fees?

MR. LEISNER: That was put in by Mr. Kavinoky's firm for roughly about $18,000, your Honor. As you're aware, the Circuit Courts hold that you must have time records and records of the work done. And apparently...

on the final meeting, gentlemen? Anything you would like to say, Mr. Sternberg, before the final report?

MR. STERNBERG: The final report and affidavit speak for themselves, as far as I'm concerned.

MR. LEISNER: Your Honor, I would like to speak for just a few moments with respect to this in a general way. This bankruptcy predates your appointment as Referee and John Henderson was District Judge at the time, Chief Judge of the District, and James Privatera was the Referee at that time. This has been an immensely tangled proceeding and also a very long one. And for that reason I feel incumbent to speak to you for a few moments on behalf of this closing and on behalf of the application here. First of all, I would like to state that Mrs. Swerdlof... and you may or may not have been personally acquainted with him, but I think it would be incumbent on me to bring to your attention several facts with respect to his application and it is a substantial application, but nonethe-

less, the work was very substantial in terms of what was accomplished and in terms of the amounts and the size of the proceeding and the diligence with which he handled both factors would weigh heavily in the overall award here.

THE COURT: How long did he actually serve?

MR. LEISNER: He served from the beginning of the bankruptcy until November of that same year. He died in November. And as a matter of fact, about the time that letter was sent.

THE COURT: November of '66?

MR. LEISNER: Yes, your Honor. And with respect to this I would say that ordinarily there would be no necessity for pointing this out to you, but inasmuch as Judge Henderson was a classmate of Mr. Swerdlof's and also Referee Privatera...but I think it would be worthwhile...

THE COURT: What difference does that make?

MR. LEISNER: Well, the circumstances... well, they would have known the circumstances for standing at the bar. The matter of the amount of time, the standing and determining, the creation of the estate, those are all

relevant factors to be considered in citing the award or passing upon the award of a fee. And therefore I would say to Your Honor, that at the time of his death he was...in the ~~time~~ prime of his practice 56 years of age. He was Counsel to the Greater Buffalo Board of Realators and also to the Builders Association. And he at one time got the award for the personal injury verdict in Erie County. I think no one would argue he was of the highest caliber and standing and confidence.

THE COURT: I'm not questioning on that. I do question, however, on quick review, whether the award of fees is all warranted. The receipts would seem to be no place near the fee requested at the time of his death. Do you think Mr. Swerdlof earned more money than was in the estate?

MR. LEISNER: I don't think so that was one of the overall factors. The application, of course, will speak for itself. But I'm calling only to ~~my~~ your consideration a factor which I think might be relevant in your passing upon the grant~~or~~. Or,

In another way the period of service ran

from March, predating even the appointment as attorney, in that he filed for the petitioning creditors to set aside a preferential mortgage of over $100,000 from the bankrupt to the M & T. The success of that entire undertaking made the creation of the estate depend widely on the attorney's effort and his efforts were substantial.

THE COURT: Was it contested?

MR. LEISNER: It was contested by the M & T very vigorously and there were long proceedings on that.

THE COURT: How long? What was the problem there?

MR. LEISNER: Up until, I believe, 1968 or '69, your Honor...

THE COURT: Well then, obviously it wasn't handled by Mr. Swerdlof.

MR. LEISNER: However, the basis of the bankruptcy and a considerable amount of the preliminary work had taken place. So I am merely mentioning that to your Honor in support of the application.

THE COURT: What was the basic reason for the delay in the closing of this estate?

MR. LEISNER: The basic reason for the delay...I have filed a request for early audit and we were in a state to close at about 1970 on almost all matters with the exception of a couple of construction contracts which were in litigation and Mr. Iwanicki from Mr. Goldstein's office worked on those and Mr. Bulan, and finally they came to ~~nods~~ a close. As soon as that we moved promptly to close the estate.

There was an authorization for the expenditure of several thousand dollars to pursue that litigation, specifically, I think, by Mr. Iwanicki at one time.

THE COURT: Well, a good part of the estate then would appear to be collection of rents, settlement of accounts receivable.. The litigation, of course, is an entirely different matter. Those are routine, ordinarily, except I assume if any of the accounts were seriously contested they'll be reflected in the time sheets?

MR. LEISNER: They will, your Honor. A good portion of this estate was created through the real property and the rentals and both the rentals and the real property were actively sought by the M & T in the litigation. And therefore I feel it's incumbent upon me to point out that approximately $80,000 or thereabouts was wholly contingent upon the litigation with the M & T. And I also...

THE COURT: Who handled that litigation? Did your office?

MR. BULAN: If I may interject for a second, Mr. Goldstein of our office negotiated with Mr. Gardner who represents the M & T here. If I am not mistaken eventually a settlement was reached wherein the trustee was allowed to keep the rents; is that correct?

MR. STERNBERG: The trustee had title.

MR. BULAN: Right. The trustee had title. But they were claiming...

MR. STERNBERG: The only thing that was litigated was the preferential mortgage and there was a $25,000 settlement.

MR. BULAN: Right. But I think there was something to the effect the M & T wanted to foreclose or something.

MR. STERNBERG: They were collecting the rent without any problem.

THE COURT: As I understand it, the Trustee had absolute right to rents unless somebody holding the mortgage...

MR. STERNBERG: My recollection, your Honor, is that the basis for the petition was the alleged preference to the bank and that did result ultimately as a result in the negotiations in the $25,000 settlement as reflected in my report.

MR. LEISNER: Your Honor, I would state because this goes back so long and merely to bring it more accurately into focus, the terms of the settlement. At one time the trustee even had to claim that he would be properly indemnified or protected if he collected the rents and paid taxes and so on and the M & T prevailed with its claims. So that what I'm urging to the Court and it

THE COURT: Fine. This would be the only affidavit you had wished to consider in addition to the papers already on file?

MR. BRENNAN: Yes, sir.

THE COURT: I do have, in addition to what appears to be an affidavit, or copy of an affidavit furnished to the District Court in connection with the appeal, an affidavit dated March 30th, 1976. And in addition I'm going to propose that the final meeting be transcribed by the Court Reporter and be made part of this record, since I do note that some matters which are claimed to have been overlooked were covered by that colloquy.

Now, I don't know, Mr. Brennan, that you have heard that colloquy at the final meeting.

MR. BRENNAN: Transcribed?

THE COURT: It was not. I intend to have the Reporter take it.

MR. BRENNAN: If it wasn't transcribed I'm not familiar with it.

THE COURT: Would you like to have that played before you?

THE COURT: You in fact urge the reasonableness of that fee, have you not, Mr. Leisner, from your acquaintance with the case?

MR. LEISNER: No. I was urging that the... with respect to the fee application itself that Mr. Swerdlof was an attorney of the highest repute and he was an attorney of unusual ability. And that I brought those things to the Court's attention that they might...the Court might... use their best judgment with respect to it. In fact, whatever support I could lend to that application, but I'm fully mindful of the limitation that would be placed upon an application by Mr. Kavinoky with respect to it.

THE COURT: Your application is $18,000 and your co-counsel...

MR. BRENNAN: $18,500, your Honor.

THE COURT: $18,500. And your co-counsel's was what amount?

MR. BRENNAN: $8600, your Honor.

THE COURT: $8600.

MR. LEISNER: We'll be putting on some evidence in short order, your Honor.

appears in my papers and so on more adequately is, that the settlement here encompassed is not only the $25,000 of the outright cash payment but the M & T gave up any claim that it had by virtue of the rental assignment and so on, upwards of some $50,000 or so of rentals and revenues from that property. So that in effect this was a tangled proceeding and the bankrupt estate realized some $70,000 to $80,000 net after taxes from that property. The M & T in its proceedings could well have moved in at its very inception. And when they saw what was happening and the rents that were being derived from this and so on they then acted in a very, very active and vigorous manner.

There are copious papers and voluminous papers in this file with respect to that. The Hodgson Firm and Mr. Gardner thought this and contested this very much.

And I participated with Mr. Goldstein very actively and directly in all of those negotiations, each and every one of them.

THE COURT: Well I'll have to look at the

papers. My understanding is, unless the holder of a mortgage turns a receiver of rent, the Turstee's right or entitlement to rent is clear. Maybe there's a feature of this that I don't understand, but this is an old case and it's one of the cases that adopted a practice, which as you know, the Court now frowns upon, namely, co-attorneys. In my judgment, certainly the attorneys in this case didn't need anyone to hold their hands while the litigation progressed. But I'll have to make my judgment as to what the fair value of the services may be. Anything further?

MR. LEISNER: I would point out to the Court two other considerations in this case in addition to the amount of time and the creation of a very substantial estate, I would point out that the Circuit Court in the Second Circuit Hammer vs. Tuffy(sic), Lernahan(sic) has said that 30% of an allowed fee will go to overhead of the attorney as a substantial consideration. Of course that would not be true in Mr. Swerdlof's case, but it would be

Judge Learned Hand

true in my own instance, that in the setting for passing upon an application for fees the Referee may take into consideration the economics of the law practice and the fact that a 30% charge which would be for overhead. Additionally...

THE COURT: 30% of what?

MR. LEISNER: 30% of any fee awarded to the attorney would go to the overhead of the attorney, is a very potent ~~pompous~~ consideration. And I would also point out to the Court, in addition to that, the factor of income taxes today is a very substantial consideration in any attorney's practice.

THE COURT: I'm aware of that, Mr. Leisner. I think the State Bar Association, which I did a study on in the last year, the average overhead was about $25 an hour for an attorney's office in a Metropolitan area. At least I've assumed that they knew where when they spoke in figuring that figure. And it's based, I think, on six billable hours a day by an attorney. These are economic factors the Court must consider in fixing a fair and

reasonable fee. But as I say, the primary consideration I have is the size of the application in this case. We'll have to review the file most carefully, because as I pointed out, it was a case that was administered in part prior to my appointment and consequently I'm not familiar with that aspect of the case. And I'll have to review the documents and the records.

MR. LEISNER: Your Honor, may I state, this is a very happy occasion for me and I believe for the Court, too, to be winding up one of the oldest ones. My purpose in coming here has been largely to alert the Court to the matter you just mentioned and I thank you very much.

THE COURT: Certainly a happy day for the Court. I hope we don't have any cases this old on our docket again. All right.

MR. LEISNER: Thank you."

(End of Tape)

THE COURT: Are you ready to proceed, Mr. Brennan?

MR. BRENNAN: Yes. We'll call Mr. Leisner to the stand.

WHEREUPON,

L. ROBERT LEISNER

after being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BRENNAN:

Q. For the record, Mr. Leisner, what is your profession?

A. I'm a Practicing Attorney. At the present time I am a Hearing Officer for the New York State Tax Commission and I hear formal hearings of litigated tax cases across the State of New York.

Q. How long have you held that position?

A. I've held that since approximately June of 1970.

Q. What is your professional background as far as education and admission to the Bar?

A. I attended Canisius College in the 40's and took Pre-Legal Ed with a concentration in

Accounting and Business. Upon completion of three years of accelerated program I attended the University of Buffalo Law School and obtained a Law Degree from the University of Buffalo in 1951. I then went into the United States Army from about 1952 to 1954. In the latter part of my service in the Army I was stationed at Fort Meyer, Virginia and I attended the Georgetown University School of Foreign Service and took courses leading to a degree in Business and Public Administration. Again, concentrating on finances and accounting and matters of business.

After completing the degree for the Bachelor of Business and Public Administration... and I had already obtained a Law Degree...I was admitted to the bar in July of 1954. Go ahead, Mr. Brennan.

Q. I'll see if I can go over your career in a schematic fashion. What courts were you admitted to practice in?

A. I'm admitted to practice in the United States District Court of the Western District,

Northern District, of all the Courts of New York State, the State Courts. I'm admitted to practice before the United States Tax Court and I have appeared before the Securities and Exchange Commission.

I have appeared in courts in and on behalf of the Revenue Service.

Q. Are you a member of the...first of all, are you a resident of the City of Buffalo?

A. Yes.

Q. And your home is here?

A. Yes.

Q. Are you a member of the Professional Bar Association in this area, such as the Erie County Bar, New York State Trial Lawyers Association and the State Bar Association?

A. Yes, I'm a member of the New York State Bar Association, the Erie County Bar and the Cattaraugus Bar Association.

Q. You from time-to-time were in private practice in both Cattaraugus County and the City of Buffalo, were you not?

A. Yes.

Q. And getting into your experience in the tax field, were you ever employed by the United States Government as a Trial Attorney in the IRS?

A. Yes. From 1956 until 1959 I was employed as a Trial Attorney for the Regional Council of the Internal Revenue Service at Cleveland, Ohio. And my duties took me throughout the northern half of Ohio, Toledo, Akron, Cleveland and so on. I participated in quite a number of Tax Court trials and matters in the northern district of Ohio.

Q. And did you work the other side, too, when you came away from Federal practice and did you represent and practice extensively...did you represent clients and practice extensively in the tax field as an attorney for tax payers?

A. Yes. When I came to Western New York and returned from Ohio, my three-year tour of duty in the Revenue Service, I held myself out to the profession as a specialist in tax matters. As you're aware of, we can't specialize to the general public but I did have announcements to

the profession itself.

MR. BRENNAN: Mark these for identification.

(The documents above-referred to, were marked Petitioner's Exhibits 1 and 2 for identification)

BY MR. BRENNAN:

Q. I show you what appears to be an announcement card with your name on it marked Petitioner's 1 for identification, and is that the type of announcement card you mailed to members of the legal profession?

A. Yes. In January of 1960 I sent this out to the members of the Bar and members in tax practice throughout Western New York. Not only the Erie County Bar but many of the suburban or adjacent county Bar Associations as well.

Q. I show you Petitioner's 2 for identification and, is that a subsequent notice? I marked in the pencil note on the back that that was circulated around 1973?

A. 1963, Mr. Brennan.
Q. Pardon me, 1963.
A. Yes.
Q. All right.
A. At that time I moved my office to 2500 Rand Building and in announcing the change of my office I continued to hold myself out to the profession in matters of tax practice.
Q. With regard to the types of cases, were you connected with the O'Connor case which was a net worth case which still holds the record in this area for civil litigation for length of time in and out of the trial courts?
A. Yes, correct. I litigated the net worth case on the civil basis before the United States Tax Court. The trial took a year in itself and the actual trial time took a matter of weeks, beginning in the fall and continuing in the winter for a week or two and then in the spring. But it was one of the most extended litigations in Western New York in tax matters. And the O'Connor case themselves with the number of back and forth appeals in the Second Circuit and

so on is probably the longest tax case in United States Tax Court history or among two or three of the longest.

Q. In addition to your tax work and representing both U.S. and private clients, were you also involved in the litigation of civil and criminal matters and would you name several of the well-known cases you participated in?

A. Yes. In addition to the O'Connor case...and this is again on tax matters...I was Counsel for the Cassiani's in the Tax Court on net worth litigation and again I was Counsel for the Cassiani's in the Federal District Courts and again in the U.S. Tax Court. These were all net worth litigations. In addition to that litigation which was in the tax field and predominently net worth type of litigation and from which I derived most of my income, I also acted as Counsel in a number of very difficult cases involving Federal Constitutional Rights or Rights of children.

And among those were Cheryle Jolls, which was a First Degree Murder Case on one indictment

and a kidnapping in conjunction with that indictment and another kidnapping indictment. In addition to that I defended or acted on behalf of Carl DeFlumer in the District Courts of the Northern District of New York and in the Western District of New York and, again, into the Second Circuit of the New York Federal Circuit Court of Appeals.

Q. Has that case been a National T.V. case?

A. Yes. That case to this day continues to be very preeminent. Ramsey Clark spoke on behalf of DeFlumer. Selwin Rabb(sic) who has appeared on the cover of Time Magazine...

Q. First of all who was DeFlumer?

A. DeFlumer was a 14-year old who was the last child to be sentenced to a life term under New York State Laws in 1948.

Q. And is this case now in the hands of the Hodgson-Russ Office?

A. No, DeFlumer...it did go to ~~Hodgson-Russ~~ Mudge Rose around 1970 after I could no longer carry it economically or in terms of health, even. So it went to ~~Hodgson-Russ~~ Mudge Rose and to successor law firms.

Eventually DeFlumer was released and took up a new life for about two years. I have just seen he's in trouble again in New York City.

Q. Not due to you, of course?

A. No, no.

Q. Going into this case at hand, leaving your professional background, we have been in the courtroom when we heard the tapes that contained the colloquy at the final meeting of creditors and you heard those tapes as best you could, right?

A. Yes, yes.

Q. And first of all is there anything on those tapes that you feel is contradictory to your position in this matter?

A. No, I don't think there's anything on those tapes that is contradictory, particularly in my own representations to the Court. With respect to the matters which I have just heard some of the colloquy by Mr. Sternberg with respect to the matters of a $25,000 settlement, that's in error. The settlement, as I mentioned to the Court at that time and as I have

represented to the court in my application and in my subsequent motion to the District Court, was a much more complex and involved settlement than just that. It entailed...

THE COURT: Let me interrupt you. You know Mr. Sternberg, do you not?

THE WITNESS: Yes, I do.

THE COURT: He's been a Bankruptcy Practitioner for how many years before this Court?

THE WITNESS: I don't know how many years, but a good number of years, yes.

THE COURT: I would assume three or four decades at the very least; is that a fair statement?

THE WITNESS: I wouldn't know that.

MR. BRENNAN: I think that's true, your Honor.

THE COURT: I think the District Court would know that as well.

MR. BRENNAN: So that we make our position clear and I'm going to take you through the questioning in sequence in this, we take a

diametrically opposite position and so did the Manufacturers & Traders Trust Company, on who was entitled to those rents. The mortgage called for an assignment of the rents. In the pleadings of the M & T which we'll hand up to the Court, they clearly indicate that the M & T considered as an intrical part of this overall settlement that they had a claim on the rents. And we're going to have marked and offered up to the Court in this case as an exhibit a letter which shows the tortureous...that's a bias word...sequence of negotiations in this M & T settlement addressed to L. Robert Leisner and signed by William H. Gardner. This is dated August 15th, 1969, in which I'll quote briefly. I don't think there's any adversary proceeding here.

THE COURT: Go ahead.

MR. BRENNAN: And you'll find there's absolutely nothing in this letter that has anything but respect for the Court and everything else. But it's interesting to note the second paragraph of the letter. "At the conclusion of

our conference, I asked for and obtained your assurance that if the Trust Company reduced a settlement offer to writing, the existence of that writing or the contents thereof would be treated in confidence and, specifically, would not be brought to the attention of the Referee in Bankruptcy unless a signed stipulation of agreement, entered into conditioned upon the approval of the Referee in Bankruptcy, was actually executed. Our concern in this regard stems from the fact that Mr. McQuire will have to sit in judgment of the facts in connection with the pending litigation, if trial actually becomes necessary, and we do not wish to have him subjected to unconscious influences which might arise from the knowledge hereof."

THE COURT: I'm not sure I followed the gist of that, Mr. Brennan.

MR. BRENNAN: The gist of it, your Honor, as the...there were a tremendous amount of motions in this M & T Settlement...

THE COURT: Was that settlement after I was on the bench?

MR. BRENNAN: I think so. When was it?

THE WITNESS: Yes. It was settled and you signed the final stipulation of settlement and entered an order...

THE COURT: I just agreed to the stipulation. Probably Counsel having no recall in the matter...

MR. BRENNAN: If I may, your Honor, I'll go in and try to take him over this as mercifully and briefly as possible.

THE COURT: Go ahead.

BY MR. BRENNAN:

Q. After you entered into the bankruptcy situation, you did so as a surviving associate of John Swerdlof, is that correct?

A. Correct.

Q. And you were in the practice of law prior to his decease in November of 1966?

A. Correct, yes.

Q. And you were in his office or you were together, at least, during the time that he had the initial work on the Dummond bankruptcy matter, were you not?

A. Yes, true.

Q. And after Mr. Swerdlof died did you then take over some of the work that he had performed up to that point?
A. Yes. His relatives asked me if I would.
Q. Well, you did, didn't you?
A. Yes.
Q. We don't have to give the background of why.
A. Yes.
Q. But you did?
A. Yes.
Q. But you were asked to do it by creditors and people he rented said...
A. Yes.
Q. In the report we heard you were high in your praise of Mr. Swerdlof; there's no question about that at the final meetings of creditors?
A. Correct, I still am.
Q. At the meetings at which you were extolling the virtues of Mr. Swerdlof, who was represented by the Kavinoky firm, there was no one there from the Kavinoky office speaking on behalf of the Swerdlof claim, was there?
A. No. That's why I spoke on behalf of that claim.

Because much to my chagrin there had been no appearance on behalf of my late associate, who could not be there himself on this matter.

Q. And for whom you had abiding affection.

A. That's so.

Q. As far as the merits of your own claim, what state were the records in when you took over as co-counsel with the Goldstein-Bulan Firm?

A. The records were in very rough shape. There were approximately four full filing cabinets out on Sheridan Drive in the warehouse part of the Fiedler & Company Accounting Firm. There were approximately three or four cartons of records up at the Swerdlof home in North Buffalo and there were voluminous files in the Swerdlof office at 2500 Rand Building.

THE COURT: May I get that clear. You're not talking about Mr. Swerdlof's records, you're talking about the bankruptcy records?

THE WITNESS: The bankruptcy records, Albert W. Dummond.

BY MR. BRENNAN:

Q. You are not talking about any papers, you're

not talking about John Swerdlof's personal clients or estate; you're talking about the bankrupt's records?

A. Right.

Q. Were any of the papers called out or segregated as to maybe putting them in different piles of problems? Had that been done at that point?

A. No. By and large there has been a sale of the personal items and there had been a blanket letter sent out to all of the debtors of Albert W. Dummond. A Xerox letter and correspondence was just in its embryo, coming back and forth on those things. Again there were just the beginnings of correspondence with tax matters, investigations, Governmental authorities and so on. And there were accounts receivable that were listed in the schedule and many of those were still up at North Buffalo or out on Sheridan Drive and a number of them were in the Swerdlof law office.

Q. May I interrupt you?

A. Yes.

Q. Did the Dummond Company do work across the State

of New York?

A. Yes. The Dummond Company not only did work across the State of New York, but it did work in other states. If I recollect...but this is a long time ago, ten years, nearly, they had business to do in Connecticut, in Maine, I think in Pennsylvania and I believe they had gone down into Washington, D.C. and possibly Michigan, but I can't remember that entirely.

Q. And they were installers of commercial windows, were they not?

A. Yes. There were a number of Dummond Corporations. There was Dummond Metal, Window Erection, Dummond Supply Corporation. There was the Albert W. Dummond, Inc., and I think there was another Dummond related company or affiliate.

Q. Did you have to correlate all those companies and how they fit into the Dummond Bankruptcy picture?

A. Yes. When Mr. Swerdlof died and I was appointed with Mr. Goldstein as co-counsel, one of the things that was brought to the attention of the Bankruptcy Court, and this of course, was

the prior court, was that this was a complex case with many liens across the State. And that there was a preferential mortgage and there had been a question of solvency or net worth in that. And also there were mechanics liens across the State and many accounts receivable with offsetting claims.

And it was desirable at that time to appoint co-counsel in the case. The fact being that Mr. Goldstein is a very able practitioner in Bankruptcy Court and has a very large collection practice and he would be uniquely qualified for that. And with the solvency question, with the amounts of net worth litigation that I had done, I would be well-qualified or equipped to work on that. And we had worked on that jointly and in no way, too, at odd ends. And when we held our organizational meeting...

Q. Which was when, after John Swerdlof's death?

A. Yes. About the latter part of November, 1966. I took steps to segregate the files and get immediately, as many of the lien files and collection files and so on to Mr. Goldstein's

office. I think William Murnigan was working in the office at that time and I dealt directly with Mr. Murnigan a great deal of the time. With respect to the overall bankruptcy I conferred with Mr. Goldstein directly on those and we also made an arrangement very early in the beginning that Mr. Goldstein and I would coordinate our work with respect to the M & T Mortgage. I would continue with all the papers, the financial statement and the situation generally, but keep him posted on it. And when it came to active negotiations, because of the large size of it, it was felt that both of us should partake of a great deal of negotiations and confer and act in unity with respect to that.

Q. M & T mortgage covered a piece of real estate which the bankrupt owned on River Road in the Town of Tonawanda, did he not?

A. Yes.

Q. In that property there was the West End Brewery Company known as the Utica Club people as a tenant, and there was the Coder Truck Service, correct?

A. Yes, that's correct. There were two tenants.
Q. And were those tenants, Coder Truck Service... maybe truck service...but it was known as the "Coder Tenancy" in the papers and the "West End Brewery Company Tenancy", commonly known as the Utica Club Tenancy" were they in those tenancies under leases?
A. Yes.
Q. Yes or no?
A. Yes, they were.
Q. And did these leases contain clauses which gave the tenants options to buy?
A. Yes. Both leases had options to buy.
Q. And so there's an understanding, for the record, there were two separate buildings, were there not?
A. Yes. The brewery had a very large building and was located close to the Thruway and they brought big semis or trucks to the end of the Thruway and it was a main distribution point. And Coder, being a trucking service, utilized another building there for their trucking lines.
Q. All right. Jumping to the end of the line so

we get the perspective where the tenancies fit in this overall settlement with the M & T; before any ultimate settlement could be made with the M & T on the relinquishment of their mortgage line, you had to either break those leases and have them release their option to buy or the whole matter with the M & T, as far as settlement purposes was concerned, would fall through; is that a correct statement of fact?

A. Yes.

Q. Let me ask you another question, then you can comment. Did you go into the Justice Court on eviction proceedings to clear these leases?

A. Yes. It was felt that we would be in a much better position with respect to it. It was not necessarily essential in all respects to break those leases or purchase options, but everytime we would be in a position to accomplish that we would augment the bankrupt estate. So I did go into the...

THE COURT: What was the viability of those

leases following bankruptcy, in your judgment?

THE WITNESS: They were still viable leases. In fact they had the purchase...the option to purchase with respect to those. And we had brought...

THE COURT: Who considered the trustee bound by them?

THE WITNESS: We did. We brought show cause orders in the Bankruptcy Court at one time to break those right here in the Bankruptcy Court. And that was all deferred because at the time they felt it would be better to just receive the rent and proceed with the leases as they were and put that off to another day. As to the ultimate on that, I have no knowledge whether we would have been able to break those in the courts...in the Bankruptcy Court or in the State Court. But in fact, I did go into the State Court and break the Coder Lease. I broke the option to purchase and the option to renew. Now the other one might have been litigated here, or in this Court or in a State Court and I really have no idea how that would have ended up

then.

THE COURT: The Trustee had possession of these properties, I take it, at all times?

THE WITNESS: Yes.

THE COURT: And you elected to proceed in the Justice Court?

THE WITNESS: Yes. Because it was much more summary and expeditious with respect to the situation in terms of the local jurisdiction and so on. We obtained special permission at the time with respect to that. And the Court directed that we be permitted to pursue this in the Justice Court.

BY MR. BRENNAN:

Q. Following...or maybe not following...but during the sequence of events, was there also a sale of the property and, I say the "property," the real property, at auction in this bankruptcy proceeding?

A. Yes. As we went along and our collections were coming in, Mr. Goldstein and I conferred and we felt it would be good at that time to obtain an auction, a bid on the property and if

it was a high enough bid we could work something out with the M & T and we should sell the property. We were in a position where at the time we were collecting rentals we had this assertion of an M & T preferential mortgage and it was being put over and we thought if we stablized the value in some way we would know better where we fit with respect to the entire matter. So we held...we obtained permission from the Bankruptcy Court to conduct an auction and there was a piece-meal auction and a lump auction, as well, for the two parcels of property. And I think we obtained a lump bid of $80,000 and a piece-meal of $85,000 on those properties. But we were still not clear on the M & T business at that time.

Q. And did you recommend that the Trustee reject these bids and were they rejected?

A. Yes. We recommended that. As a matter of fact, the West End Brewery, or Mr. Matt, had to be notified of the bid by the prospective purchaser. And Mr. Matt of the West End Brewery immediately elected to pursue his option to

purchase. So we had to go to the court and have the auction not approved or reject the bids because we didn't feel it was the best...in the best interest of the bankrupt and we had to move ahead with that M & T assertion of the very large claim.

Q. And was the property...jumping ahead a bit... subsequently with the arrangement of settlement with M & T, subsequently purchased through the foreclosure sale which was part of the settlement by the M & T at $102,500?

A. Yes, approximately, at that time. I don't have the exact figures in mind, but around $101,000 or $102,000.

Q. And at the time, or prior to the time of that sale did the Trustee in bankruptcy, through the efforts of the Counsel, begin a proceeding in this court to set aside the M & T lien as a preference?

A. Yes. I drew up a petition and a show cause order. I conferred with Mr. Goldstein on that and I did considerable research on that. I got out the deed description and so on, the

M & T Mortgage, the dates and so on and researched all of that.

I remember going into that exhaustively a number of times because of the importance of it. We were concerned to have it extremely letter-accurate. I conferred with Mr. Goldstein several times on it and he thought of various points that he would like in those papers and we endeavored to keep it very concise and simple but at the same time to go right to the gravity of the action of the M & T.

THE COURT: This was the preferential matter now?

THE WITNESS: Yes.

BY MR. BRENNAN:

Q. Now prior to reaching the petition stage or order to show cause, which you obtained, according to my notes on February 21st, 1968, order to show cause why the mortgage should not be set aside as preferential, had you done the work on determining from a net worth study at the Dummond Company as far as the mortgagee was concerned was insolvent and that the bank

should have known it was insolvent at the time the collateral mortgage went on?

THE COURT: Go ahead.

BY MR. BRENNAN:

Q. Do you understand the question? It's about four questions. Did you do the preliminary work to determine whether there was an insolvency issue here?

A. Yes. In the main files on the net worth and the solvency of the Albert W. Dummond, Inc., the financial statements and so on, all of those files I had in my office. I had made this arrangement with Mr. Goldstein at that organizational meeting. And from time-to-time we would confer with respect to it with respect to progress on accounts receivable and on various aspects of it. We talked at times about the matter of the knowledge or the fact that the M & T should have had knowledge of the insolvency. And Mr. Goldstein at that time would relate his conversation with the former President of the Albert W. Dummond Company and he elected to get an EBT to spell out some of the factors

with respect to that. And Mr. Bulan and myself and Mr. Goldstein participated in that. In the main, Mr. Goldstein acted in the EBT and Mr. Bulan took some part in it, but I had, by arrangement, beforehand asked Mr. Goldstein to take the examination of the witness and I would cover only the point on the consolidated statement or points that should be brought up to fill out a net worth statement. Also, if it got to trial later I would prefer that Mr. Goldstein had conducted the examination and I had had an opportunity to observe Mr. Dummond and be ready to take the case in that respect.

Q. And in reaching that point of the net worth study, you had to put together consolidated or performa balance sheets and profit and loss statements for these participating companies in the Dummond operation?

A. Yes. We also were faced with the proposition at that time that very obviously I could not litigate the case and take the witness stand myself with respect to it, nor could Mr. Goldstein determine to hire Mr. Fiedler, the

Fiedler & Company Accounting Firm to draw up financial statements. In that matter, though, because they are performa statements and they are of an essential type for this type of litigation, it was necessary to constantly confer with Mr. Fiedler to advise him about accounts receivable and book value and appraised values of real estate and so on. It wasn't a case where we could just give him the accounts receivable or the real estate or many other things and just say, here, make a statement. We had to outline to him the facets of law that were there. When I say "we" in most of those conferences there I spoke to Mr. Fiedler myself. However, I kept Mr. Goldstein apprised of the matter and talked to him about it. In conjunction with it we were together on that.

MR. BRENNAN: I would like this marked Petitioner's 3.

(The document above-referred to, Petitioner's Exhibit 3, was marked for identification)

BY MR. BRENNAN:

Q. After the show cause order was handed down in the M & T matter did the bank attorneys, through William H. Gardner, appear?

A. Yes.

Q. Were there pleadings in this?

A. There were a number of pleadings.

Q. I show you Petitioner's 3 for identification entitled "The Amended Answer of the Manufacturers and Traders Trust Company" in opposition to that petition to set aside the mortgage as preferential; have you seen that before?

A. Yes, I have.

Q. In that petition...strike that. In that Answer does the M & T raise the following claims or insert the following claims that they're entitled as of the date of that pleading to $137,000... using round figures...and they had an itemization there, do they not?

A. Yes.

Q. Do they also claim they are entitled to reasonable attorney's fees beyond that?

A. Yes. True.

Q. And do they also claim they want the back taxes paid, which are I think at that time in a stated sum of $12,000, in round figures? There's a schedule there on Page 3.

A. Yes.

Q. And do they also claim...and I think just before the "wherefore" paragraph...they are entitled to all of the rents that have been collected under the assignment and the mortgage which is attached to the Answer and that they want an accounting of those rents?

A. Yes. They make that claim. It's covered in the paragraph, Paragraph 11 of this pleading.

Q. And I have in my hand...and I don't think it's necessary...I don't know if they are in the bankruptcy file, but I have in my hand, oh, probably eight other documents in this range of litigation with the M & T which involves notice of deposition, orders, several orders determining liability insurance, modification, stipulation of settlement, order vacating appointment of auctioneer, order indemnification agreement, original answer which you have the

original answer and notice of deposition, and do those papers represent a long and projected series of legal maneuvers which preceded the settlement discussion?

A. Yes. In each instance of those papers there was either considerable negotiations, call-backs or court appearances with respect to them. Sometimes it would be a matter of appearing in Bankruptcy Court and stating an agreement on this, postponement or an adjournment, a reservation of rights. Each time those papers came about it represented a substantial amount of work on those.

THE COURT: Are any of those papers under Mr. Leisner's cover?

MR. BRENNAN: No.

THE COURT: None?

MR. BRENNAN: None. They are all under the covers of the Hodgson-Russ Firm.

THE WITNESS: The reason why I state that to the court, is that the initial order to set aside the mortgage, that was prepared in my office and is the main stay or foundation of this action.

THE COURT: On that point you said you had done some substantial research and that was filed in this court?

THE WITNESS: That was filed in this court, yes.

THE COURT: You didn't see a jurisdictional problem on the preference action in the bankruptcy court?

THE WITNESS: There was a question of whether there should be some matter in State Court, but that was researched and we felt it was well within the purview of the Bankruptcy Court to have jurisdiction of that.

THE COURT: Was it clear in your mind this court had absolutely no jurisdiction at all, absent consent by your adversary.

THE WITNESS: That I don't recall now, Mr. McQuire. It's nine years or so with respect to it. But I do know that we had researched that. Again, with respect to that...and this is a long time back...I think that at that juncture it was felt that we would start in bankruptcy court and if it needed to be removed to a State

Court that could be accomplished or so on. Those were matters again, of timing or of strategy on it. This was filed in the bankruptcy court. Now, with respect to the matter of the number of papers there that were prepared by the Hodgson-Russ Law Firm, I merely indicate that with respect to all of those there were court appearances which obviously don't have papers with them or much correspondence. I don't think that it would be well to belabor the court with all of that.

THE COURT: You also thought, I take it, that the affirmative defense claiming or counter-claiming rents had some merit?

THE WITNESS: Yes. I think in terms of the letter that was sent by Mr. Gardner, a direct offer is very clearly made up. And I held a conference with Mr. Gardner in advance of that letter of his and that's reflected in the letter in which we went over a great many factors of the rentals, of the accounts receivable and of what the M & T portion would be in one way, the M & T portion in another

way. Also what the sale price might be in an auction and what the sale price might be with the M & T offering financial inducement on mortgage consideration. What the prime rate was on interest. There were many considerations which we discussed in those conferences.

THE COURT: I'm sorry to interrupt.

MR. BRENNAN: You're not interrupting a bit. I would like this marked.

(The document above-referred to, Petitioner's Exhibit 4, was marked for identification)

BY MR. BRENNAN:

Q. In your last answer to a question from the Court, you mentioned that a series of settlement discussions as to avenues that might be pursued in the way of putting...concluding the matter economically?

A. Yes.

Q. I show you what I referred to in discussions with the Court, a letter dated August 15th, 1969,

directed to you from William H. Gardner, and ask you if that letter contains an outline of the alternatives that were discussed at meetings with the Bank Counsel and of various methods which the bank would consider in the way of settling the preference claim and the conclusion of its claim and return to the bankrupt's estate?

A. Yes. This letter of August 15th, 1969 is the letter in which the proposals that the M & T finally made and which were largely acted upon. This letter embodies the result of many other meetings and correspondence and so on. We had a great many other letters with respect to this in the beginning, not ever an offer of proposal of this nature but we would have them back and forth on many of the other matters. Some of those letters were sent to Mr. Goldstein on some of the matters of the stipulation or so on, with copies to me. On this particular one this was sent to me as a result of the meeting we held and began to evolve the final settlement in this case.

Q. All right.

MR. BRENNAN: So that the Court may consider it I'm going to have all these exhibits offered.

THE COURT: Fine. 1 through 4 will be received into evidence.

(The document above-referred to, Petitioner's 1 for identification, was received into evidence)

(The document above-referred to, Petitioner's 2 for identification, was received into evidence)

(The document above-referred to, Petitioner's 3 for identification, was received into evidence)

(The document above-referred to, Petitioner's 4 for

identification, was received into evidence)

MR. BRENNAN: I would like this marked as Petitioner's 5 for identification.

(The document above-referred to, Petitioner's Exhibit 5, was marked for identification)

MR. BRENNAN: I would like to offer this into evidence. This is an affidavit of character appeal-sworn to on 9th of February, 1976, in support of Mr. Leisner's application.

THE COURT: It will be received.

(The document above-referred to, Petitioner's Exhibit 5, was received into evidence)

BY MR. BRENNAN:

Q. Now, at the end result of the M & T settlement the property was sold under the stipulation of

settlement and the Manufacturers and Traders Trust Company...and it's attached to your affidavit before the District Court Judge on the motion to reconsider the fees...acquired this property at a sale price of $102,500; did they not?

A. Correct.

Q. And on the report of the Referee in that sale there was a computation...I'm using round figures...at that time of the M & T lien which was rounded off to $154,000, and that shows on the attached exhibit to your motion affidavit; is it not?

A. Correct.

Q. And as part of this settlement the Manufacturers and Traders Trust Company relinquished that deficiency judgment claim in the excess of $51,000, did they not?

A. Yes.

Q. In addition to that the Trustee retained the rents of...in round numbers...$62,000?

A. Yes.

Q. In addition to that the M & T paid back to the

Trustee and the bankrupt estate the sum of $25,000 less one-quarter of the last prior year's school tax, did they not?

A. Correct.

Q. And in addition to that as a result of these monies being retained in the bankrupt estate, a substantial portion of the $21,000 in interest, which accrued to the bankrupt estate was realized through the retention of these assets, were they not?

A. Yes. If these assets were not retained I doubt whether we would have any interest at all.

Q. If the sale had gone through at $80,000 single or $85,000 piece-meal, which you recommended be rejected by the Trustee, that would not have been able to get into the overall settlement picture which subsequently accrued through the salvage of $22,500?

A. No. It would not for several reasons.

Q. The first thing being money, right?

A. Right. We would have had a tremendous battle with the M & T. I felt it was desirable to at least, know what we were battling about or

litigating on, and this amount of money would not have been sufficient in terms of the litigation from either vantage point. Additionally, in the discussion with Mr. Gardner, Mr. Gardner many times brought out with the high prime rates that were in the money market at the time that the M & T through financing and so on could probably work out a much better or advantageous deal for the M & T.

Now, we had a tax situation as well and we felt that at that time it wasn't well just to rush into a conflict for the sake of a conflict. It was better to look about and see which way would work out best for the bankrupt. Mr. Gardner obviously wanted to find out which way would work out best.

Q. And at the time that the settlement went through and the M & T sale and foreclosure was effected, the tenancy decks had been cleared and that facilitated the sale; did it, to the buyer?

A. Pardon me. Would you read that back again, please?

(The pending question was read back by the Reporter)

THE WITNESS: That qualified circumstances, Mr. Brennan, that the Coder lease and purchase option were knocked out. The West End option, I don't know what happened to that, or where it stood or if the M & T acted upon it. I have no knowledge of that. We did get it to a better circumstance than what it was previously.

Q. Now, after obtaining the result of that sale did you then have to file the income tax returns with the Government?

A. Yes.

Q. Prior to that sale did you file income with the Government?

A. Yes, returns were filed throughout the time of the bankruptcy. I think they started in...I have them from 1967 through 1973. After 1973 no income was received by the bankrupt. This presented a number of problems right from the beginning of the bankruptcy. I took the matter over in the late part of November 1966 and I have a vague recollection that the corporation

was on a fiscal year. And filing was delayed to conform to that fiscal year and later when we got along to that type of filing of a fiscal year, the Trustee didn't care to get into a fiscal year and elected to go on an annual basis. He felt with bank statements coming in at the end of the year and interest and all the rest of it he wanted it on a calendar year regardless of what. So we filed on a calendar year. Now, in the first year, in 1967, I did file a fiduciary return. Then I researched some of the matters and I found that there was a provision to file a corporation return and in fact...and I'm hazy about this again, but I think that the bankruptcy court at the time said it was better to file a corporation return.

THE COURT: Mr. Leisner, as a matter of fact, the revenue code required that a Trustee for a corporation file a corporate return and there wasn't any question about that, was there?

THE WITNESS: At the time I believe there was a considerable question about it, Mr. McQuire.

THE COURT: Was there a code provision that specified A,B,C, how a Trustee was to file or not?

THE WITNESS: I can't at this juncture tell you right here and now. When I say that at that time a fiduciary return was filed and I have an annual report or a special report on bankruptcy tax returns which was just put out by the State Bar in which a Senate Committee for the U.S. Senate states the difficulties on this. They found...

THE COURT: That's on an entirely different subject. That's on the Bankrupt Commission problem as to whether it should be taxable. The question here is what return to file. And if I told you the law was clear that a corporate return was filed or should have been filed by a corporate bankrupt, would you disagree with me?

THE WITNESS: No, I said I filed...

THE COURT: A fiduciary return?

THE WITNESS: I filed corporate returns thereafter.

THE COURT: All right.

THE WITNESS: If I recollect, there's a provision in the Internal Revenue Code, if a file is paid from one entity for another entity that can be taken into consideration. It's an obscure provision in the code but I have come into that in prior years. So I wasn't too alarmed on this situation. When I filed these returns we filed them in 1967, '68, '69 and '70 and I put in a request for an early audit in 1970 and these questions or problems came up with not only '67, '68, '69 and '70, which we went through, but also with respect to that portion of '66 which was the period which was not covered by any return. At that time I took that up with the auditor, whether that was necessary or deemed essential or so on. We all felt there was no requisite or need for it under the circumstance.

THE COURT: Well the corporation that goes bankrupt ordinarily has a substantial loss that goes forward that will carry it beyond any taxable period, unless there's any extraordinary gains on the sale; is that a fair statement?

THE WITNESS: That's correct.

BY MR. BRENNAN:

Q. Did you request an early audit of these returns from the IRS?

A. Yes. I requested them in 1970 and again after filing returns for 1971, '72 and '73 I filed another request because the bankruptcy took longer than I anticipated.

Q. All right.

MR. BRENNAN: I'd like this marked Petitioner's Exhibit 6 for identification and this Petitioner's Exhibit 7 for identification.

(The document above-referred to, Petitioner's Exhibit 6, was marked for identification)

(The document above-referred to, Petitioner's Exhibit 7, was marked for identification)

BY MR. BRENNAN:

Q. I show you Petitioner's Exhibit No. 6 for identification which is a photocopy of the letter from the IRS which indicates they accepted returns as filed for the years... would you read them, please?

A. For the year ended 12-31-67, the year ended 12-31-68 and the year ended 12-31-69.

Q. And I show you Petitioner's Exhibit 7 for identification and ask you if that's a similar letter from the IRS giving the years in which the returns were accepted as filed?

A. This is for the years 12-31-70, 12-31-72 and 12-31-73. I also requested for the year 12-31-70 and in the view of the Internal Revenue that was a closed year and a letter could not be sent out with respect to that year. So all of the years from 12-31-67 through 12-31-73 were accepted as filed.

MR. BRENNAN: I'll offer those, Judge, Exhibits 6 and 7.

THE COURT: Would you like to make the returns that were filed as Exhibits?

MR. BRENNAN: Yes.

THE COURT: I think you can identify those. I take it they're in your handwriting.

(Witness examines documents)

THE WITNESS: Yes, I identify those.

MR. BRENNAN: All right. I'll offer the two letters as 6 and 7 and I'll offer that as Petitioner's 8.

(The document above-referred to, heretofore marked Petitioner's Exhibit 6, was received into evidence)

(The document above-referred to, heretofore marked Petitioner's Exhibit 7, was received into evidence)

(The document above-referred to, Petitioner's Exhibit 8, was marked for identification)

(The document above-referred

heretofore marked Petitioner's Exhibit 8, was received into evidence)

BY MR. BRENNAN:

Q. Mr. Leisner, when you held yourself out as a tax practitioner to the brethren at the Bar from 19...what was the date that you mentioned, '61?

A. '60, January 1st, 1960.

Q. And your subsequent announcement which you corrected me was 1963 instead of '73...

A. Yes.

Q. What hourly rate did you charge for that Counsel work in tax matters?

A. In the beginning at 1960 I inquired as to what the rate was on a tax specialist and at that time I was informed that the rate was $50 an hour. That was in 1960.

Q. And did you charge that?

A. I charged that in tax cases where they were involved or complex. But I could not charge that in a case where, for example, there was

a very small deficiency. Sometimes lawyers would send a case over in which the deficiency was $2,000 or some small amount and if it took quite a bit of time I obviously couldn't charge the $50 an hour, in the year 1960. And a contingent fee is barred in that type of case. But I did work out a practice after talking with a number of lawyers wherein if the result was very good and the time consumed was very little you could double or triple time. I found that tax payers understood that very well because you had to have a good background a lot of study in it and they understood that. I couldn't go in and accomplish a great result of them and go on a time basis and have a meager hourly rate. In matters of substance, from the very beginning in 1960 I charged $50 an hour. Obviously in cases like the assigned cases or the constitutional rights cases I talked about earlier, I received little or no fees on those. But in tax work or financial litigation I always charge that.

Now, when it got to the middle 60's, the

fees then went up more. They were...around 1965...$60 an hour already and they were going higher in the latter part of the 60's. I didn't get to a point in the latter part of the '60's where I had many opportunities of cases of that nature to charge more than the $60 an hour. I did some but I was considerably burdened at that time with the Bauer case and with the DeFlumer cases and with some other cases in the New York State Court of Appeals.

Q. The next question, at the final meeting of creditors in which you put in your request for fees, as did the Goldstein-Bulan Firm and the Kavinoky Firm, was there opposition from the creditor attorney?

A. No, there was absolutely no opposition. Mr. White of the IRS came in and he did not oppose it. Mr. Sternberg did not oppose it and the Goldstein firm did not oppose it. There were several creditors on wage earner claims and none of them opposed it. There was no opposition from any quarter.

THE COURT: Do you recall Mr. White

saying he would wait until he saw the amounts fixed by the Court?

THE WITNESS: He stated that he would wait until he saw the amounts fixed by the Court with respect to the IRS Service Claim.

THE COURT: Secondly, on Mr. White's appearance, there's an adequate amount of money in the estate even if the fees were allowed in full to pay the IRS claim in full; is that not the case?

THE WITNESS: Yes.

THE COURT: The class of creditors that would be affected would be the unsecured creditors who are not represented except by the trustee in the fee application; is that also not correct?

THE WITNESS: That's correct. But I think notices went out to all general creditors.

THE COURT: Oh, yes. The rules require that. Go ahead, Mr. Brennan.

BY MR. BRENNAN:

Q. All right. Did you keep time records of your

time in all respects in this Dummond bankruptcy matter?

A. I did.

Q. Did you bring boxes into the courtroom showing the records? And I'm picking up some of them and lawyers recognize this as a daytimer pocket part, which has a day compartment for keeping time records and is this the type of record you kept?

A. Yes. That one box there is entirely daytimers and daytimer sheets and so on. I brought those in and I also kept a file by chronological order of all papers, to the best I can recall. I had no idea when this bankruptcy started that it would ever go beyond '70 or '71. I felt it would be wrapped up.

Q. All right.

MR. BRENNAN: I'm finished with my questions. I call to the Court's attention and I say this whimsically, I don't want to get mixed up in any anti-trust legislation or trust question and I don't know if it even applies, but the last addition of the lawyer's

desk book put out by the Erie County Bar Association indicates the office work per hour would range in the area of $30 to $60 per hour. With a footnote that "Preparation for file in any court to be charged at regularly hourly rates for office work." I looked and could not find the date that this book was published. My best recollection is it would predate 1970. Mr. Offermann, I think, was the Chairman of the Committee and if he's around maybe we could have him identify it.

THE COURT: I'm not particularly worried about that. I don't claim there's any difference of opinion between the Court and Mr. Leisner on the value of an attorney's services. The problem here is the problem the Court confronts when it has two or three people all saying, look at the wonderful job we did and then you have to gauge how much ought to be allowed in terms of the work that was performed. And who did it is often the biggest problem. Who carried the laboring oar. I have got the problem that the preference

litigation and the handling of the legal services here was worth the sum that I fixed effectively. You always have the problem of the one lawyer who feels he carried the laboring oar, feeling he's been short-changed. That's a problem that arises from the co-counsel situation. It's a situation this Court does not now permit. If there's going to be... special counsel services are delineated so the court can differentiate as to what result was obtained by whom.

I have difficulty in this case. Special counsel...I think there are also special articles by the ABA Committees and New York State Bar Committees with respect to legal services and rates. I don't have any quarrel with the $50, $60, $70 figures that Mr. Leisner's talking about. Although I take it since 1970, at least, any services after that date certainly wouldn't have the overhead problem that you had formerly.

THE WITNESS: No.

THE COURT: All right.

LAW OFFICES

Brennan, Tesseyman, Zelman, Runfola & Brownstein

WILLIAM R. BRENNAN
F. WILLIAM TESSEYMAN
ARNOLD N. ZELMAN
ROSS L. RUNFOLA
JOEL BROWNSTEIN
FRANCIS WM. TESSEYMAN, JR.
EVELYN O'CONNOR
JUDITH D. KATZENELSON

1360 STATLER HILTON
BUFFALO, N. Y. 14202

TELEPHONE: 849-3866
AREA CODE: 716

February 17, 1976

OUR FILE NO. _____

Honorable Beryl E. McGuire
Bankruptcy Judge
312 United States Courthouse
Buffalo, New York 14202

COPY

RE: Bankruptcy of Albert W. Dummond, Inc.
BK 66-1499; Fee application of L. Robert Leisner, Esq.

Dear Judge McGuire:

In the hearing held February 12th, a recorded colloquy among attorneys, creditors and the Court at the final meeting of creditors was played aloud and is to be transcribed by the hearing reporter and included in the record of the Leisner application and hearing. One of the elements involved in this disc transcript was the character and ownership of rents collected during the period of administration. The posicion of Mr. Leisner is, of course, that the rents were claimed by the mortgagee and could well have been declared the property of the Manufacturers and Traders Trust Company (if successful in its lien claim) as mortgagee with an assignment of rent in its favor.

The Court, however, may have interpreted Trustee Sternberg's remarks at the final meeting of creditors as indicating that only a $25,000 sum was involved in the M & T settlement and that the rentals collected by the Trustee were not a settlement factor.

Mr. Leisner states to me that in earlier Court sessions at which he was present there were colloquys in which Mr. Sternberg indicated that he was quite concerned about the fact that he might not be able to retain title to the rents as trustee and therefore refused to pay real estate taxes out of the rent funds unless and until he was given an indemnification agreement by the M & T which: (1) indemnified him against any backcharge for the payment of taxes; and (2) guaranteed to him administrative commissions should he not be deemed to be the rightful owner of the rents. Whether or not such a transcript can now be found, (it should be contained in the proceedings of March 25, 1968), Mr. Leisner states that such concern was in fact expressed by Trustee Sternberg. As proof that the issue was raised and an indemnification agreement was insisted upon by the Trustee, I enclose a signed copy of the order and indemnification agreement which verifies the above mentioned matters (marked Enclosure A).

Honorable Beryl E. McGuire February 17, 1976

I also call to the Court's attention the decision in Central Hanover Bank & Trust Co. v. Philadelphia & Reading Coal & Iron Co. (CCA 3d, 1938) 38 Am. B.R. (N.S.) 241, 99 F.(2d) 642, wherein the court declared:

> "It is settled in this circuit that in a bankruptcy proceeding a mortgage creditor is entitled without prior demand to the net income of the mortgaged property from the date of adjudication if it is needed to pay the amount due him. In re Torchia (C.C.A., 3rd Cir.), 26 Am.B.R. 579, 188 Fed. 207; Bindseil v. Liberty Trust Co. (C.C.A., 3rd Cir.), 41 Am.B.R. 454, 248 Fed. 112; Associated Co. v. Greenhut (C.C.A. 3rd Cir.) 23 Am.B.R.(N.S.) 628, 66 F.(2d) 428. This is because the bankruptcy proceeding has taken from the debtor the possession of his property and in so doing has deprived the mortgage creditor of his ordinary remedy to reach the property mortgaged and its income. It, therefore, follows upon equitable principles, as Judge Wooley pointed out in Bindseil v. Liberty Trust Co. supra, pages 456 and 457 of 41 Am.B.R., page 114 of 248 Fed., 'that after insolvency has taken the debtor's property out of his hands, its income or product belongs to the lien creditor, who has thus become its virtual owner; and that such income or product issuing from mortgaged property, should not be diverted from the mortgage creditor who has a lien to general creditors who have no lien.' The right of the mortgage creditor, however, attaches only to the net income remaining after payment of proper administration expenses, operating expenses and taxes, as allowed by the bankruptcy court. Petersburg Sav. & Ins. Co. v. Dellatorre (C.C.A., 5th Cir.), 70 Fed. 643; Florida Nat. Bank of Jacksonville v. United States (C.C.A., 5th Cir.), 32 Am.B.R.(N.S.) 649, 87 F. (2d) 896."

In the Matter of Cigar Stores Realty Holdings, Inc. (C.C.A. 2d Cir.), 25 Am.B.R.(N.S.) 171, 69 F. (2d) 823, the Second Circuit stated there should be some deficiency present to justify the application of the rents to the mortgage indebtedness. The evidence in the Leisner hearing clearly indicates that the

COPY

Honorable Beryl E. McGuire February 17, 1976

Manufacturers and Traders Trust Company was awarded a deficiency judgment of $51,876.93 by the Referee in Foreclosure.

These cases indicate that between adversary mortgage claims and defenses there was a justiciable controversy concerning title to the rents collected which resulted in the Trustee seeking indemnification. The issue concerning rents had a disputed case law background. It certainly was a weighty factor in settlement negotiations and was resolved to the benefit of the bankrupt's estate only after prolonged discussions and legal maneuvering.

In the original application for fee allowances each of the three petitioning attorneys recited the fact that the retention of the rents by the Trustee was indeed an integral plus part of the settlement worked out with the M & T. A copy of the settlement stipulation is enclosed (marked Enclosure B).

This dispute over rents was corroborated by the income tax returns.

Enclosed is a statement (marked Enclosure C) which was attached to the 1967 tax return (initial return) showing even then the existence of a dispute concerning rent. Copies of early years' income tax returns in the bankruptcy files may only contain the face of the return but the aforementioned statement was attached to the original as filed. At that time (1967) in local bankruptcy practice it was not uncommon to file a fiduciary return for a bankrupt corporation where there were only one or two items of income. This type of return was accepted by the Revenue Service, as was the fact in the present case. It should be pointed out, however, that only the 1967 fiscal year return was a fiduciary return (Form 1041) and subsequent returns of the Trustee were in corporate form.

Very truly yours,

WILLIAM R. BRENNAN

WRB/tn
Encs.
bcc: Mr. L. Robert Leisner
2 Kimberly Street C
Albany, New York 12205

Albert N. Drummond Inc. 1967
schedule.

The rents collected herein are claimed by the M & T Trust of Buffalo, N. Y. as being its property under a first mortgage of the rental property.

Real property taxes and depreciation are not detailed for this reason.

Additionally all funds collected herein if found to be funds of the bankrupt, will belong to the cred itors and will be distributable to them by Court order.

ENCLOSURE C

United States District Court

FOR THE WESTERN DISTRICT OF NEW YORK

IN THE MATTER
OF

NO. BK-66-1499

ALBERT W. DUMMOND, INC.

Bankrupt

Report

HON. BERYL E. McGUIRE
Bankruptcy Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

ALBERT W. DUMMOND, INC., BK-66-1499

Bankrupt

William R. Brennan, Esq., of counsel
for L. Robert Leisner, co-counsel for
Trustee
Buffalo, New York

L. Robert Leisner, pro se

McGuire, Bankruptcy Judge

By Order of the Honorable John T. Curtin, Chief Judge, dated January 19, 1976, the fee recommendation with regard to Mr. Leisner, a co-attorney for the trustee, was remanded for further review and report. Specifically, certain factors in Mr. Leisner's Motion for Reconsideration were to be reviewed, and he was to be given an opportunity to supply additional affidavits, documents and testimony.

Accordingly, a hearing was held before this Court on February 12, 1976. A transcript of that hearing was filed on April 14, 1976, and that transcript

and the exhibits offered in support of a higher fee accompany this report. Also included at this Court's direction is the statement by Mr. Leisner at the final meeting of creditors (t. pp. 8-19). The latter was included in light of some of Mr. Leisner's more recent claims.

I

Paragraph one (1) of Mr. Leisner's affidavit on his Motion for Reconsideration states that notice of the fee approval by the District Court on October 7, 1976 was not mailed to him until October 20, 1975. In fact, the certificate of mailing on the District Court order indicates that it was mailed to Mr. Leisner on October 9, 1975. Mr. Leisner's motion, of course, was received by the Clerk of District Court on December 9, 1975.

II

Mr. Leisner, throughout the affidavit which is his Motion for Reconsideration, has felt quite free to embellish the facts.

While in points in his papers it would appear that Mr. Leisner was the only attorney in the case, at other times he does claim that his duties were carefully defined. In spite of his quite apparent fascination with the bankrupt's mail (see Mr. Leisner's time sheets), this Court will assume that he primarily claims that he and the late Mr. Swerdloff handled the preference case against the M & T (with experienced bankruptcy counsel merely sitting by to learn) and, in addition, that he contributed ". . . an enormous amount of tax work and expertise . . ." (Mr. Leisner's affidavit p. 8, ¶ 32).

A

On the latter claim (the tax work) the returns have been made an exhibit (petitioner's #8) and their "complexity" will be noted at a glance. Although Mr. Leisner at first filed a fiduciary return and thereafter corporate returns, he still is not sure that his initial return was an incorrect one. See t. pp. 62-64; and 26 U.S.C. § 6012(b)(3).

B

On the former claim, relating to the preference suit, this Court considers the dearth of papers bearing

Mr. Leisner's cover to be of significance. The hearing regarding the settlement of this preference claim was scheduled, heard and ultimately approved by this Referee.

Basically the trustee's action to recover property worth approximately $100,000.00 was compromised for $24,000.00. If Mr. Leisner also thought he was recovering $80,000.00 plus in rents, I suspect that he alone shared that delusion. The rents in question, of course, accrued and had been previously collected by the trustee, and the rule in this Circuit relative thereto is well settled. See Matter of Brose, 254 Fd. 664 (2d Cir. 1918); In re Cigar Stores Realty Holdings, Inc., 69 F2d 823 (2d Cir. 1934); 4A Collier on Bankruptcy, ¶70.16, pp. 158-161 (14th Ed. 1976).

It will be noted that at the final meeting Mr. Leisner spoke in support of a fee both to Mr. Swerdloff's estate of $18,000.00 and to himself of $18,500.00. Since the fees are sought for work principally benefiting the estate through a $24,000.00 recovery, it can be seen why the chore of fee setting is left to the Court rather than to co-counsel, kindly

fellow attorneys or unsecured creditors who are reluctant to incur the expense of opposing even exorbitant fee requests.

In light of the frivolousness of his claim to a higher fee and more important, in light of the obvious liberties taken by him in representing the facts to the District Court, it is this Court's view that Mr. Leisner's original allowance ought to be diminished by the cost to the estate for the transcript of this hearing ($139.50).

Respectfully submitted,

Bankruptcy Judge

Dated: 4-26-76

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In the Matter

of

ALBERT W. DUMMOND INC.

OBJECTIONS TO REPORT OF BANKRUPTCY JUDGE

No. BK 66 - 1499

TO THE HONORABLE JOHN T. CURTIN, CHIEF JUDGE

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

L. ROBERT LEISNER, the applicant, being duly sworn, respectfully shows the Court:

On all the proceedings had and on the applicant's petition for allowance of counsel fees, the applicant objects to the report of the Bankruptcy Judge.

TIMELINESS OF MOTION FOR RECONSIDERATION OF COUNSEL FEES

The report errs in attributing the date of October 7, 1976 to the date of notice of fee approval referred to in Mr. Leisner's affidavit, and in omitting the October 20, 1975 direction of the District Court that a hearing be held before the District Court. The Bankruptcy Court Judge was so notified by your deponent personally on October 20, 1975 and also later the same day by hand

carried letter (Exhibit A attached). Taking the mailing date of October 9, 1975 as reported in Judge McGuire's Report of April 26, 1976, Mr. Leisner still acted timely under Federal Rules of Civil Procedure, Rules 6a, 6e, and Rule 60. If the Bankruptcy Court is using a ten (10) day statute computation, then it should be noted that October 20, 1975 (a Monday) was within such time period since the two prior days were Saturday and Sunday and therefore excluded as a final day. (See letter from District Court Clerk directing filing by December 15, 1975 - Exhibit B attached).

TIME SHEETS

The Leisner original fee application affidavit specifically acknowledges and refers to work done by other attorneys. Deponent never claimed to be acting as sole counsel either in the work performed or in the results accomplished. See fee applications paragraphs 4, 7, 8, 13, 19, 22, 24, particularly paragraphs 8 and 14.

The Leisner eleven page fee application affidavit has annexed detailed time sheets (Schedule A) with the date, the work done, the time spent, and the names of persons in each instance where people were present.

This Schedule A contains over 30 pages of detailed time sheets reporting 308.35 hours of services which eventually ran to 320 hours. Your deponent also points out that he did much more than being "fascinated" by the bankrupt's mail and he specifically acted upon it as his time sheet narratives verify.

The Bankruptcy Court Report states that the '"complexity"' of the tax returns "will be noted at a glance." The Bankruptcy Court may have measured the extent of tax work merely by the summary figures which appear on the return form. The Leisner fee application did not claim the returns themselves were complex. Rather, the original fee application (paragraphs 11 & 12) and the motion for reconsideration describe investigation, research, selection and cataloging of records, requests for early audits, the actual audits of the returns and supporting papers, conferences with the U. S. tax examiner with documentation for him by way of prior financial statements and records and other loss transactions from the papers of the bankrupt. As a result of the above, a report of no change and no tax due on rent and interest receipts of $84,717.02 was received from the Internal Revenue Service. The work was lengthy, intensive and complicated and this work was performed by applicant Leisner alone. For example, the request for audit, the actual audit, the conferences, the documentation, down to the final reports of no tax change covered the period of almost a year in 1970 to 1971. The Bankruptcy Court Report gives no credit for this work and result. The Report emphasizes the form of one tax return as being questionable (but which was accepted by the IRS) but says nothing about the preparation and assembling of the tax data which gave the bankrupt's estate full clearance.

PREFERENCE SUIT

The report mentions a dearth of papers with Mr. Leisner's legal covers as significant. If this were the controlling criterion in litigation, then an attorney's fee would have to be measured by the volume of pleadings contained under his legal cover. In fact, in bankruptcy proceedings many written pleadings and documents are submitted without legal covers. The number and intensity of the legal issues raised by the counsel for the M & T Trust Co. in the preference proceedings reflect the magnitude of the legal struggle.

In paragraph 28 of the Leisner Motion for reconsideration referring to this M & T Trust Co. litigation, the legal papers in (a), (g), (h), (i), and (j) thereof were prepared by Mr. Leisner; the other papers in said paragraph 28 by the opposition. Pleadings of an opponent require court appearances, conferences, or action in one form or another. There were, of course, papers other than pleadings prepared by applicant Leisner.

The petition to set aside the mortgage was preceded by a substantial amount of work, which was followed by a great amount of work after it was served.

The Bankruptcy Court Report ignores the investigation, research of law, court appearances, conferences, letters, telephone conversations, meetings with accountants and witnesses, submission of papers and documents to the other side, reviewing papers from the

opposition, conferences with co-counsel or the trustee.

BENEFITS TO THE BANKRUPT'S ESTATE

The Bankruptcy Court Report (page 4) refers to a "delusion" suffered by Mr. Leisner "alone" with regard to recoveries made for the bankrupt's estate. This Report cites case law to the effect that the Trustee had title to the accrued rents. The principals and their counsel in this bankruptcy proceeding certainly did not accept that such case law applied to the instant matter, as witnessed by the following:

(1) The M & T officials claimed the rentals pursuant to the terms of a previously recorded mortgage indenture.

(2) William H. Gardner (M & T counsel) in No. 11 of the M & T's Amended Answer executed by him asserted therein a claim a) for all of the rentals, b) an assignment thereof, and c) demanded an accounting.

(3) Louis Sternberg, Trustee in bankruptcy, demanded and received an indemnification agreement re his payment of taxes and administrative expenses out of the rent collected in the event the M & T succeeded in its claim that the rents were the bank's property. D.A. Birkby, Assistant Vice President of M & T, signed an indemnification agreement for the Trustee guaranteeing the payment of administrative expenses if the bank succeeded in its claim to the rentals.

(4) Hon. James A. Privitera, Bankruptcy Referee, noted the indemnification agreement and reserved to the M & T the right to

renew its application to foreclose the mortgage and press its claim.

(5) Attorney Edward H. Kavinoky states (par. 4 of the Swerdloff application affidavit) that the creation of the estate was contingent upon a number of very difficult variables and at the bottom of page 4 he states that the bankrupt was paid approximately $25,000.00 and was allowed to retain all rents. Deponent Kavinoky further stated that the rents and cash payments totalled $86,833.35 and the M & T also waived $40,000.00 to $50,000.00 of principal claims and that the amount realized with the claim waiver netted a 100% recovery on the real property for the bankrupt.

(6) Attorney David Goldstein's fee application states that the legal services, especially those connected with the alleged preferential transfer to the M & T, were in large degree responsible for the creation of the estate and this result required a great deal of effort on his behalf and that of his associates.

(7) The actual settlement stipulation provided not only a cash payment, but also surrendered any M & T claim to the rentals and waived its right to participate as a general creditor.

These seven factors refute any charges against Leisner of "delusion" and "obvious liberties taken by him in representing the facts".

Additionally, the Bankruptcy Court Report ignores the administrative difficulty of scattered bankrupt's files being located at Sheridan Drive, Arundel Road and the Rand Building, with such bulk

that they required storage at these three locations; the Bankruptcy Court gives no credit for work done in the presence of the Court to clear up tangled claims of several claimants and came to the last bankruptcy meeting without lawyers and asked the Court to protect and unravel their tangled claims; the Bankruptcy Court says nothing about several half-days spent with the Court staff itself reconciling records of court orders of the former Referee which required collation due to changes in Bankruptcy Court personnel and record keeping; the Court Report does not report conferences with labor officials, payrolls unpaid for wage-earners, W-2 forms missing, special agent tax investigations of other parties to Dummond contracts, insurance coverage ambiguities, refund claims, contract backcharges, difficulties in rental collections, lawsuits and letters to collect rents, actions to terminate leases in the Bankruptcy Court and the State courts, the real estate auction, the real property appraisal, working with accountants, matters pertaining to real property assessments, and sundry other questions and work which were referred to the applicant for his legal counsel and action. Mr. Leisner was awarded $5,500 for 308.35 hours which constitutes payment at a rate of $17.84 per hour. This is inadequate compensation for applicant Leisner. In this situation a bankrupt's estate was truly salvaged and held together. It would have been a simple matter in the beginning with such tangled affairs confronting the attorneys for the Trustee, to declare the situation hopeless and any extensive legal work to be fruitless, and merely let the M & T Trust Company invoke its real property lien leaving no estate for general creditors. This was not done. The attorneys truly resurrected this bankrupt's estate from ashes. No

creditor or attorney objected to the fees claimed upon the final accounting. The Bankruptcy Court's claims of frivolousness and lack of objectivity on the part of applicant Leisner are not corroborated by the records, the results obtained, or the reactions of creditors and other attorneys.

WHEREFORE, your petitioner renews his request for relief contained in his motion for reconsideration of counsel fees, and for such other and further relief as may be just and proper in the premises.

L. Robert Leisner

L. Robert Leisner
Attorney at Law

Sworn to before me this
17th day of May, 1976.

Thelma D. Martin

THELMA D. MARTIN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1977

L. ROBERT LEISNER
ATTORNEY AT LAW
L. ROBERT LEISNER
1 ARUNDEL ROAD
BUFFALO, N.Y.
14216

Oct. 20, 1975

Hon. John T. Curtin, Chief Judge
U. S. District Court
W.D.N.Y.

Re: Albert W. Dummond Inc.
BK 66-1499

Dear Judge Curtin:

At your direction today, I have informed the Bankruptcy Court that not having received a copy of the order when submitted to you, I have been allowed a hearing on the recommended order of the Bankruptcy Court with respect to the allowance of Counsel fees for my work.

Since I am in Albany, the hearing to be put on seasonably for a Monday on filing exceptions beforehand with your Court.

A copy of this letter is delivered to the Bankruptcy Court today so that the files will reflect the foregoing arrangements before I leave Buffalo for circuit hearings.

Respectfully,

L. Robert Leisner

L. Robert Leisner

EXHIBIT A

JOHN K. ADAMS, CLERK

OFFICE OF THE CLERK

199

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES COURTHOUSE

NIAGARA SQUARE

BUFFALO, N. Y. 14202

November 24, 1975

L. Robert Leisner, Atty.
1 Arundel Rd.
Buffalo, N.Y. 14216

Re: BK-66-1499 A.J. Dumond, Inc.

Dear Mr. Leisner:

Bankruptcy Judge Beryl Maguire has asked me to send you the following notice.

Unless an application is filed relating to the money phase of the above entitled matter by December 15, 1975, the order will be deemed final and the monies distributed.

Very Truly Yours,

JOHN K. ADAMS, Clerk

By: Robert J. White

Exhibit B

RECEIVED
NOV 28 1975
WILLIAM R. BRENNAN

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

BK-66-1499

ALBERT W. DUMMOND, INC.,

Bankrupt

DECISION
and
O R D E R

CURTIN, DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER

OF

BK-66-1499

ALBERT W. DUMMOND, INC.,

Bankrupt

APPEARANCES: WILLIAM R. BRENNAN, ESQ., of Counsel for L. ROBERT LEISNER, co-counsel for Trustee.

L. ROBERT LEISNER, pro se.

After the fee of L. Robert Leisner, co-counsel for the Trustee, was approved by the court following the recommendation of the Bankruptcy Judge, Mr. Leisner appealed to the court for further consideration. The court remanded for a hearing to the Bankruptcy Judge. The hearing has been held and the Bankruptcy Judge has filed his report and recommendation.

The court has carefully reviewed the report, the papers submitted by the applicant and appropriate parts of the bankruptcy file. There is no doubt that the setting of a reasonable fee in this case was complicated by the passage of time and by the fact that Mr. Leisner

cooperated with another lawyer as co-counsel. Nevertheless, I am convinced after studying Bankruptcy Judge McGuire's report that his original recommendation of a fee was a reasonable one under the circumstances and ought to be confirmed, and I do not believe that an analysis more detailed than that of the Bankruptcy Judge is required. The fact that other attorneys or the creditors do not oppose the application is of no benefit to Mr. Leisner. I see no reason why the fee awarded to the applicant should be greater than the one awarded to his much more experienced co-counsel. The court believes that because of the Bankruptcy Judge's familiarity with the details of these matters and the work which lawyers must do to successfully handle these cases, his recommendation on a proposed fee should not be disturbed unless the applicant provides good reason. That has not been done here.

The decision of the Bankruptcy Judge is confirmed in all respects, including his recommendation that the original allowance be diminished by the cost of the transcript for the hearing in the sum of $139.50.

So ordered.

John T. Curtin

JOHN T. CURTIN
United States District Judge

DATED: October 26, 1976

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

204

IN THE MATTER

OF

ALBERT W. DUMMOND INC.
Bankrupt

BK-66-1499

Notice
of
Appeal

SIR:

NOTICE is hereby given that L. ROBERT LEISNER, coecounsel for the trustee in bankruptcy herein hereby

APPEALS to the United States Court of Appeals for the Second Circuit from the Order entered October 26, 1976 herein;

Appellant also appeals from the October 3, 1975 Bankruptcy Court Order and report, the Ocotober 7, 1975 approval, and the April 26, 1976 Bankruptcy Court report, timely objections and motions having been made, which reports and order were confirm--ed on October 26, 1976; and from the taxing of costs against appellant.

Dated: November 19, 1976

L. Robert Leisner

L. ROBERT LEISNER

Attorney-Appellant
2 Kimberly St. #C
Albany, N. Y. 12205

TO: THE CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
U. S. Court House
Buffalo, N. Y. 14202